

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Applications of Cricket License Company, LLC, et al., Leap Wireless International, Inc., and AT&T Inc. for Consent To Transfer Control of Authorizations
Application of Cricket License Company, LLC and Leap Licenseco Inc. for Consent to Assignment of Authorization
WT Docket No. 13-193

MEMORANDUM OPINION AND ORDER

Adopted: March 13, 2014

Released: March 13, 2014

By the Acting Chief, Wireless Telecommunications Bureau, and Chief, International Bureau:

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I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we approve, subject to conditions, the applications of AT&T Inc. (“AT&T”) and Leap Wireless International, Inc. (“Leap”) (together, the “Applicants”) for Commission consent to the transfer of control of, and assignment of, a number of AWS-1, PCS, and associated microwave licenses and international section 214 authorizations from Leap’s subsidiaries, Cricket License Company, LLC and STX Wireless License, LLC, to AT&T.

2. As a result of the proposed transaction, approximately 4.6 million customers, as well as spectrum, network equipment, and other assets, will be transferred from Leap to AT&T. Based on our analysis, we find that the proposed transaction has the potential to cause some competitive and other public interest harms in several local markets, as well as to value-conscious consumers. The possibility of public interest harms resulting from the proposed transaction would likely be counterbalanced to some degree by certain claimed public interest benefits. Even taking into consideration those benefits, however, we remain concerned about the potential for the proposed transaction to result in certain public interest harms.

3. AT&T has made certain voluntary commitments, however, that will ameliorate the potential public interest harms and that will help to ensure the achievement of the asserted public interest benefits. Those commitments include spectrum divestitures in certain markets, which will help ensure that AT&T’s competitors have access to spectrum. AT&T has also made commitments to deploy LTE service using unused Leap spectrum within 90 days or 12 months of closing, which will ensure that that spectrum is being deployed and that consumers in the current Leap service areas will benefit from network improvements to AT&T’s advanced 4G network technologies. AT&T has also made commitments to build out LTE service in six specific markets in south Texas within 18 months, which will ensure that consumers in those markets have access to advanced 4G services. In addition, AT&T has committed to offer certain rate plans targeted to help value-conscious and Lifeline customers. AT&T also has agreed to offer a device trade-in credit program and a feature phone device trade-in program to certain Leap customers prior to discontinuing CDMA service in a particular area in order to ensure that Leap

customers have future access to wireless service. The commitments providing for spectrum divestitures, the deployment of unused spectrum, the build out of LTE service, rate plans, and customer migration will all apply to south Texas markets. They will ameliorate the potential harms and ensure public interest benefits in those markets by, among other things, ensuring that AT&T has every incentive to provide higher quality service, and minimizing customer dislocations that might result from the proposed transaction. In addition, in order to ensure that CDMA roaming services remain available while AT&T transitions Leap's CDMA network, AT&T has made a commitment to honor existing CDMA roaming agreements that AT&T is assuming from Leap so long as it operates the CDMA network. Finally, AT&T has offered a commitment to dispose of Leap's interests in a competitive wireless telecommunications provider if they are not sold prior to closing as well as certain other commitments to protect against possible anticompetitive effects before those interests are sold.

4. Based on our review of the record and in light of these commitments, which become conditions to our approval, we find that the public interest benefits of the proposed transaction outweigh the likelihood of significant public interest harms, such that overall, the proposed transaction is in the public interest.

II. BACKGROUND

A. Description of the Applicants

1. AT&T

5. AT&T, headquartered in Dallas, Texas, is a communications holding company that ranks among the leading providers of telecommunications services in the United States.¹ As of December 31, 2013, AT&T reported 110 million wireless subscribers, and approximately \$70 billion in wireless service revenues, which accounted for approximately 54 percent of total revenues.² AT&T's nationwide wireless network currently covers approximately 308 million people, or 99.9 percent of the population of the mainland United States.³ AT&T reports that it covers all major metropolitan areas and nearly 280 million people with its fourth generation Long Term Evolution ("LTE") mobile technology, and the company expects to cover 300 million people by the summer of 2014.⁴ In May of 2013, AT&T announced the creation of Aio Wireless, a subsidiary of AT&T offering prepaid wireless service "to value-conscious customers interested in an unlimited talk/text/data plan with no annual contract."⁵ Aio Wireless service is currently available nationwide to customers who order online, although Aio Wireless only has dealers in a limited number of markets.⁶

¹ See AT&T Inc., SEC Form 10-K, at 1 (filed Feb. 21, 2014) ("AT&T 10-K"), available at <http://www.sec.gov/Archives/edgar/data/732717/000073271714000010/0000732717-14-000010-index.htm>.

² See AT&T Inc. 2013 Annual Report, Ex. 13 (filed Feb. 21, 2014), at 1, 5, available at <http://www.sec.gov/Archives/edgar/data/732717/000073271714000010/ex13.htm>.

³ Of the 308 million people covered by its wireless network, AT&T covers 304.9 million people with 3G, 299.4 million people with High Speed Packet Access+ ("HSPA+"), and 266.8 million people with LTE. Mosaik Solutions Data ("Mosaik"), January 2014.

⁴ See AT&T 10-K at 2.

⁵ See Aio Wireless™ Announces New Nationwide Voice and Data Service (May 9, 2013), available at <http://www.att.com/gen/press-room?pid=24185&cdvn=news&newsarticleid=36421&mapcode=> (last visited Feb. 20, 2014).

⁶ See Aio Wireless™ Available Soon for All U.S. Customers (Aug. 29, 2013), available at <http://www.att.com/gen/press-> (continued....)

2. Leap Wireless

6. Leap, headquartered in San Diego, California, provides wireless services in the United States under the Cricket brand.⁷ For the fiscal year 2013, Leap reported approximately \$2.90 billion in revenues.⁸ As of December 31, 2013, Leap had approximately 4.6 million customers.⁹ As of the same date, Leap held licenses covering approximately 137 million people, of whom approximately 97 million are covered by Leap's network footprint.¹⁰ The Applicants contend that Leap is not a nationwide facilities-based provider and has no current plans to become one; it has attempted to expand its retail footprint through a 3G Mobile Virtual Network Operator ("MVNO") arrangement, but has attracted a relatively small number of customers.¹¹

B. Description of the Transaction

7. On August 1, 2013, AT&T and Leap filed the Applications¹² pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (the "Communications Act"), seeking Commission consent to the transfer of control of, and assignment of, a number of principally AWS-1, PCS, and associated microwave licenses and international section 214 authorizations. The Applications are part of AT&T's agreement to acquire Leap in an all-cash transaction.¹³ The total cash consideration is \$15 per share and expected to be approximately \$1.3 billion, and AT&T would acquire all of Leap's outstanding indebtedness.¹⁴ Leap had a net debt of approximately \$2.7 billion as of June 30, 2013.¹⁵ Leap will become a wholly-owned subsidiary of AT&T.¹⁶

8. In the proposed transaction, AT&T is proposing to acquire 10 to 50 megahertz of spectrum in 1,354 counties in 356 Cellular Market Areas nationwide.¹⁷ Post-transaction, in markets in

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room?pid=24753&cdvn=news&newsarticleid=36953&mapcode=consumer%7Cfinancial (last visited Feb. 20, 2014).

⁷ Lead Application, Exhibit 1, Description of Transaction, Public Interest Showing and Related Demonstrations at 1 ("Public Interest Statement").

⁸ See Leap Wireless International, Inc., LLC, SEC Form 10-K, at 43 (filed Mar. 6, 2014) ("Leap 10-K"), available at <http://www.sec.gov/Archives/edgar/data/1065049/000106504914000003/leap-december2013q4x10k.htm> (last visited Mar. 10, 2014).

⁹ See Leap 10-K at 4.

¹⁰ See Public Interest Statement at 1.

¹¹ See *id.* at 10-11.

¹² A list of the Applications is contained in Appendix A.

¹³ See Public Interest Statement at 2.

¹⁴ See *id.*

¹⁵ See *id.*

¹⁶ See Public Interest Statement at 2. AT&T's agreement with Leap requires Leap to dispose of its ownership interest in PR Wireless, LLC. *Id.* at 2 n. 7. On March 5, 2014, PR Wireless repurchased all of the interests in PR Wireless that were held by Cricket Communications, Inc. See Letter from James H. Barker, Esq. and Elizabeth R. Park, Esq., counsel for Leap Wireless International, Inc. and Cricket Communications, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 13-193 (filed Mar. 7, 2014).

¹⁷ See AT&T Inc., Leap Wireless International, Inc., Cricket License Company, LLC, And Leap Licenseco, Inc. Seek Consent To The Transfer Of Control of AWS-1 Licenses, PCS Licenses, And Common Carrier Fixed Point- (continued....)

which there is geographical overlap, the merged entity would hold 46 to 180 megahertz of spectrum covering approximately 137 million people, or approximately 44 percent of the population of the continental United States.¹⁸ Leap covers approximately 31 percent of the population nationwide with its network footprint; 100 percent of this population is also covered by AT&T.¹⁹ The Applicants assert that the proposed transaction would combine AT&T's nationwide network with Leap's prepaid/no-contract business to the benefit of consumers seeking a high-quality, competitively-priced prepaid wireless experience.²⁰ Further, according to the Applicants, the transaction will result in an improved network experience for customers of both companies.²¹ The Applicants also contend AT&T can make use of Leap's PCS and AWS-1 spectrum more efficiently to enhance AT&T's LTE deployment.²² The Applicants contend as well that the transaction will result in substantial operating synergies and substantial savings in roaming and resale expenses because the combined company will offer a significantly greater on-net footprint and expanded coverage compared to Leap's current network.²³

9. In addition to cash, Leap's shareholders will each receive a contingent value right ("CVR"), that will entitle them to net proceeds received from the sale of Leap's Lower 700 MHz A Block license in Chicago (the "Chicago License").²⁴ Leap Licenseco, a subsidiary of AT&T, will become the licensee for the Chicago License.²⁵ According to the Applicants, however, Laser, Inc. ("Laser"), a newly formed indirect, wholly-owned subsidiary of AT&T, will serve as the stockholders' representative and will exercise *de facto* control over the Chicago License.²⁶ The stockholders' representative will have the power to make all decisions and to act on behalf of and as agent for the CVR holders, including the authority to conduct a sale process with respect to the Chicago License for the benefit of the former Leap shareholders.²⁷ If the stockholders' representative fails to enter into an agreement to sell the Chicago License within two years after the closing of the AT&T/Leap transaction (or if an agreement has been entered into, but the Chicago License has not been sold by the third anniversary of the closing of the AT&T/Leap transaction), then AT&T will have the right to sell the license, and the net proceeds will go to the former Leap shareholders.²⁸

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To-Point Microwave Licenses, and International 214 Authorizations, and the Assignment of One 700 MHz License, WT Docket No. 13-193, *Public Notice*, 28 FCC Rcd 12776, 12777 (WTB IB 2013) ("*Accepted for Filing PN*").

¹⁸ *See id.*

¹⁹ *See* Mosaik, January 2014.

²⁰ *See* Public Interest Statement at 7-13.

²¹ *See id.* at 13.

²² *See id.* at 13-17.

²³ *See id.* at 19-20.

²⁴ *See* Public Interest Statement at 3.

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See id.* In addition, as part of the stockholders' representative's responsibility for maintaining the Chicago License, Laser will have the authority to enter into a consensual arrangement to address the technical issues relating to the digital television protection criteria applicable to the Channel 51 broadcast station signal adjacent to the Chicago License. *Id.*

²⁸ *See* Public Interest Statement at 3.

10. Cricket Communications, Inc. (“CCI”), a subsidiary of Leap, has been a minority owner of Flat Wireless, LLC (“Flat”), since 2010.²⁹ Flat is a regional wireless telecommunications provider that operates in Texas, Colorado, Arizona, and California.³⁰ CCI currently holds [BEGIN CONFIDENTIAL INFORMATION]

[END

CONFIDENTIAL INFORMATION].³¹ In its Public Interest Statement, the Applicants represented that Leap was contractually committed to dispose of its interest in Flat prior to closing on the proposed transaction.³² AT&T, however, has recently informed the Commission that it has agreed to waive that condition prior to consummation of this transaction.³³ There is a dispute between CCI and Flat about the ability of CCI to dispose of its membership interests in Flat.³⁴ An arbitrator has stayed the disposition of CCI’s interests in Flat pending resolution of the arbitration.³⁵

C. Transaction Review Process

11. On August 1, 2013, the Applicants filed the Applications. On August 20, 2013, the Applicants amended the Applications to make a supplemental filing providing additional information requested by staff.³⁶ On August 28, 2013, the Commission released a public notice announcing acceptance of the Applications for filing and establishing a pleading cycle, with petitions to deny due September 27, 2013, oppositions due October 7, 2013, and replies due October 15, 2013.³⁷ Due to the government shutdown, the pleading schedule was revised; oppositions were due October 23, 2013, and replies were due October 31, 2013.³⁸ In response to the Comment Public Notice, the Commission received eight petitions and one comment, a Joint Opposition from the Applicants, and seven replies.³⁹

²⁹ See Letter from Donald J. Evans, Esq., counsel for Flat Wireless, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 13-193, at 1 (filed Jan. 6, 2014) (“Jan. 6, 2014 Flat Wireless *Ex Parte*”).

³⁰ Jan. 6, 2014 Flat Wireless *Ex Parte* at 1.

³¹ See *id.* Leap responds that “Cricket has irrevocably and forever waived” its interest in those warrants. See Letter from James H. Barker, Esq. and Alexander Maltas, Esq., counsel for Leap Wireless International, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 13-193, at 2-3 (filed Jan. 16, 2014) (“Leap January 16, 2014 *Ex Parte*”).

³² See Public Interest Statement at 2 n.7.

³³ See Mar. 6, 2014 AT&T Fifth Supplemental Response at 2 (updated Mar. 11, 2014).

³⁴ Jan. 6, 2014 Flat Wireless *Ex Parte* at 2. See also Leap January 16 *Ex Parte* at 2.

³⁵ See Mar. 6, 2014 AT&T Fifth Supplemental Response at 2.

³⁶ Applications, Letter from William E. Cook, Jr., Esq., counsel for AT&T and James H. Barker, Esq., counsel for Leap Wireless International, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 20, 2013) (“Aug. 20, 2013 Applicants Supplemental Response”).

³⁷ *Accepted for Filing PN.*

³⁸ Revised Filing Deadlines Following Resumption Of Normal Commission Operations, *Public Notice*, 28 FCC Rcd 14091, 14092 (CGB EB IB MB PS&HSB WTB WCB OET OGC OMD 2013).

³⁹ A list of filings in this proceeding is contained in Appendix B. On November 4, 2013, The Greenlining Institute reported that, based on discussions it had with AT&T, it no longer opposed the Applications, so long as there was no material change in the transaction, and subject to the following conditions: (1) Cricket will remain an ETC in California and will continue to offer the federal Lifeline discount to existing and new Lifeline-eligible customers who reside in the geographic area served by Cricket’s facilities-based CDMA network at merger closing for a period of eighteen months after merger close; (2) In any application to relinquish Cricket’s ETC status in California, the (continued....)

We address issues raised in these filings below.⁴⁰

12. On August 29, 2013, the Wireless Telecommunications Bureau (“WTB” or “the Bureau”) released a public notice announcing that Numbering Resource Utilization and Forecast (“NRUF”) reports and local number portability (“LNP”) data would be placed into the record and adopted a protective order pursuant to which the Applicants and third parties would be allowed to review the specific NRUF reports and LNP data placed into the record.⁴¹ Also, on November 8, 2013, pursuant to section 308(b) of the Communications Act, the Bureau requested additional information and documents from AT&T and Leap.⁴² The Bureau also released protective orders to ensure that any confidential or proprietary documents submitted to the Commission would be adequately protected from public disclosure, and to announce the process by which interested parties could gain access to confidential information filed in the record.⁴³

III. STANDARD OF REVIEW

13. Pursuant to sections 214(a) and 310(d) of the Act,⁴⁴ we must determine whether the Applicants have demonstrated that the proposed transfer of control of licenses and authorizations will serve the public interest, convenience, and necessity. In making this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act,⁴⁵ other applicable

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 effective date will be no earlier than eighteen months after merger close; and (3) Every six months, AT&T California executives, including AT&T California President Ken McNeely, will meet with Greenlining's Executive Director, Orson Aguilar, and members of the Greenlining Coalition. At these meetings, AT&T California will provide updates on AT&T's commitments. These meetings will occur for a period of at least eighteen months after merger close. Based upon those representations, Greenlining no longer opposes the transaction. See Letter from Orson Aguilar, Executive Director, The Greenlining Institute to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 4, 2013).

⁴⁰ As a preliminary matter, Maneesh Pangasa urged the Commission to combine its review of the AT&T/ATN transaction and this proposed transaction. That request is now moot. See Maneesh Pangasa Statement for the Record (filed Sep. 9, 2013).

⁴¹ See Applications of AT&T, Leap Wireless International, Inc., Cricket License Company, LLC, and Leap Licenseco, Inc. For Consent to Transfer Control And Assign Licenses and Authorizations, Numbering Resource Utilization and Forecast Reports and Local Number Portability Reports to Be Placed Into the Record, Subject to Protective Order, WT Docket No. 13-193, *Public Notice*, 28 FCC Rcd 12821 (WTB 2013); Applications of AT&T, Leap Wireless International, Inc., Cricket License Company, LLC, And Leap Licenseco, Inc. For Consent to Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-193, *Protective Order*, 28 FCC Rcd 12810 (WTB 2013).

⁴² See Letter from Jim Schlichting, Acting Chief, Wireless Telecommunications Bureau to Michael P. Goggin, AT&T Inc., WT Docket No. 13-193 (rel. Nov. 8, 2013); Letter from Jim Schlichting, Acting Chief, Wireless Telecommunications Bureau to Robert D. Irving, Jr., Leap Wireless International, Inc., WT Docket No. 13-193 (rel. Nov. 8, 2013)

⁴³ See Applications of AT&T., Leap Wireless International, Inc., Cricket License Company, LLC, and Leap Licenseco, Inc. For Consent to Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-193, *Protective Order*, 28 FCC Rcd 11796 (WTB 2013); Applications of AT&T., Leap Wireless International, Inc., Cricket License Company, LLC, and Leap Licenseco, Inc. For Consent to Transfer Control and Assign Licenses and Authorizations, WT Docket No. 13-193, *Second Protective Order*, 28 FCC Rcd 11803 (WTB 2013); AT&T-Leap, Revised Appendix A to the Second Level Protective Order, WT Docket No. 13-193, 28 FCC Rcd 15860 (WTB 2013).

⁴⁴ 47 U.S.C. §§ 214(a), 310(d).

⁴⁵ Section 310(d) requires that we consider the application as if the proposed assignee were applying for the licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., Applications of Sprint Nextel Corp. and SoftBank (continued....)

statutes, and the Commission’s rules, including whether the applicants are qualified to hold licenses.⁴⁶ If the transaction does not violate a statute or rule, we next consider whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.⁴⁷ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.⁴⁸ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.⁴⁹

14. Our public interest evaluation necessarily encompasses the “broad aims of the Communications Act,” which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, promoting a diversity of license holdings, and generally managing the spectrum in the public interest.⁵⁰ Our public interest analysis also entails assessing whether the proposed transaction will affect the quality of communications services or result in the provision of new or additional services to consumers.⁵¹ In conducting this analysis, we may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁵²

15. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.⁵³ The Commission and the Department of Justice (“DOJ”) each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission’s competitive review differ somewhat from those applied by the DOJ.⁵⁴ Like the DOJ, the Commission considers how a transaction will affect competition by defining a relevant

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Corp. and Starburst II, Inc. for Consent to Transfer Control of Licenses and Authorizations, IB Docket No. 12-343, Memorandum Opinion and Order, *Declaratory Ruling, and Order on Reconsideration*, 28 FCC Rcd 9642, 9650, ¶ 23 (2013) (“*SoftBank-Sprint Order*”); Applications of Celco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, WT Docket No. 12-4, *Memorandum Opinion and Order and Declaratory Ruling*, 27 FCC Rcd 10698, 10710 ¶ 28 (2012) (“*Verizon Wireless-SpectrumCo Order*”).

⁴⁶ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9650, ¶ 23; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710, ¶ 28; Application of AT&T Inc. and Qualcomm Incorporated For Consent to Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, 26 FCC Rcd 17589, 17598-99 ¶ 23 (2011) (“*AT&T-Qualcomm Order*”).

⁴⁷ See *id.*

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9651, ¶ 24; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603, ¶ 32, n.96.

⁵¹ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9651, ¶ 24; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10752, ¶ 143.

⁵² See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9651, ¶ 24; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599, ¶ 24.

⁵³ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9651, ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10710, ¶ 29.

⁵⁴ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599-600 ¶ 25; Applications of AT&T Inc. and Celco Partnership d/b/a/ Verizon Wireless, WT Docket No. 09-104, *Memorandum Opinion and Order*, 25 FCC Rcd 8704, 8717 ¶ 24 (2010) (“*AT&T-Verizon Wireless Order*”).

market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition and the efficiencies, if any, that may result from the transaction.⁵⁵ The DOJ, however, reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it sues to enjoin a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.⁵⁶ The DOJ review is also limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations.⁵⁷ The Commission's competitive analysis under the public interest standard is somewhat broader, for example, considering whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant markets.⁵⁸ If we are unable to find that the proposed transaction serves the public interest for any reason or if the record presents a substantial and material question of fact, we must designate the application(s) for hearing.⁵⁹

16. Finally, our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.⁶⁰ For instance, combining assets may allow a firm to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁶¹ Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁶² Section

⁵⁵ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9652, ¶ 25; Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition For Declaratory Ruling that the Transaction is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17462 ¶ 28 (2008) (“*Verizon Wireless-ALLTEL Order*”).

⁵⁶ 15 U.S.C. § 18.

⁵⁷ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 28.

⁵⁸ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17599 ¶ 25.

⁵⁹ 47 U.S.C. § 309(e); see also *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; News Corp. and DIRECTV Group, Inc., Transferors, and Liberty Media Corp., Transferee, for Authority to Transfer Control, MB Docket No. 07-18, *Memorandum Opinion and Order*, 23 FCC Rcd 3265, 3277 ¶ 22 (2008); Applications of EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., CS Docket No. 01-348, *Hearing Designation Order*, 17 FCC Rcd 20559, 20574 ¶ 25 (2002).

⁶⁰ See, e.g., *AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 26; Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, MB Docket No. 10-56, *Memorandum Opinion and Order*, 26 FCC Rcd 4238, 4249 ¶ 25 (2011) (“*Comcast-NBCU Order*”); *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29; see also *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10711 ¶ 30.

⁶¹ See, e.g., *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29.

⁶² See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10711 ¶ 30; *Comcast-NBCU Order*, 26 FCC Rcd at 4249 ¶ 25; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29; Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 04-70, *Memorandum Opinion and Order*, 19 FCC Rcd 21522, 21545, ¶ 43 (2004) (“*Cingular-AT&T Wireless Order*”) (conditioning approval on the divestiture of operating units in select markets). See also Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., CC Docket No. 97-211, *Memorandum Opinion and Order*, 13 FCC Rcd 18025, 18115 ¶ 156 (conditioning approval on the divestiture of MCI's Internet assets); Applications of VoiceStream Wireless Corporation, PowerTel, Inc., Transferors, and (continued....)

303(r) of the Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁶³ Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”⁶⁴ Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.⁶⁵ In exercising this broad authority, the Commission generally has imposed conditions to confirm specific benefits or remedy specific harms likely to arise from transactions and that are related to the Commission’s responsibilities under the Act and related statutes.⁶⁶

IV. QUALIFICATIONS OF APPLICANTS

17. Among the factors the Commission considers in its public interest review is whether the applicant for a license has the requisite “citizenship, character, financial, technical, and other qualifications.”⁶⁷ Therefore, as a threshold matter, the Commission must determine whether the applicants to the proposed transaction – both the assignee and the assignor – meet the requisite qualifications requirements to hold and transfer licenses under section 310(d) and the Commission’s rules.⁶⁸

18. *Discussion.* As an initial matter, we note that no parties have raised issues with respect to the basic qualifications of Leap. The Commission generally does not reevaluate the qualifications of
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Deutsche Telekom AG, Transferee, IB Docket No. 00-187, *Memorandum Opinion and Order*, 16 FCC Rcd 9779 (2001) (conditioning approval on compliance with agreement with Department of Justice and Federal Bureau of Investigation addressing national security, law enforcement, and public safety concerns).

⁶³ 47 U.S.C. § 303(r). *See also* *SoftBank-Sprint Order*, 28 FCC Rcd at 9652, ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10711 ¶ 30; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 26; *Comcast-NBCU Order*, 26 FCC Rcd at 4249 ¶ 25; *FCC v. Nat’l Citizens Comm. for Broadcasting*, 436 U.S. 775 (1978) (upholding broadcast-newspaper cross-ownership rules adopted pursuant to section 303(r)); *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (section 303(r) powers permit Commission to order cable company not to carry broadcast signal beyond station’s primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (syndicated exclusivity rules adopted pursuant to section 303(r) authority).

⁶⁴ 47 U.S.C. § 214(c). *See also* *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65, *Memorandum Opinion and Order*, 20 FCC Rcd 18290, 18303 ¶ 19 (2005).

⁶⁵ *See, e.g., Comcast-NBCU Order*, 26 FCC Rcd at 4249 ¶ 25; Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, *Memorandum Opinion and Order and Report and Order*, 23 FCC Rcd 12348, 12366, ¶ 33 (2008) (“*Sirius-XM Order*”); *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21545, ¶ 43. *See also* *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

⁶⁶ *See, e.g., Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10711 ¶ 30; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17600 ¶ 26; *Comcast-NBCU Order*, 26 FCC Rcd at 4249 ¶ 25; *Sirius-XM Order*, 23 FCC Rcd at 12366, ¶ 33; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17462 ¶ 29.

⁶⁷ 47 U.S.C. §§ 308, 310(d); *see also, e.g.,* Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS Of Anchorage License Sub, Inc., And Unicom, Inc. For Consent To Assign Licenses To The Alaska Wireless Network, LLC, WT Docket No. 12-187, 28 FCC Rcd at 10433, 10444 ¶ 28 (“*Alaska Wireless Order*”); *SoftBank-Sprint Order*, 28 FCC Rcd at 9652 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712 ¶ 33.

⁶⁸ *See* 47 U.S.C. § 310(d); 47 C.F.R. § 1.948; *see also, e.g., Alaska Wireless Order*, 28 FCC Rcd at 10444-45 ¶ 28; *SoftBank-Sprint Order*, 28 FCC Rcd at 9652-53 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10712 ¶ 33.

assignors unless issues related to basic qualifications have been sufficiently raised in petitions to warrant designation for hearing.⁶⁹ We find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Communications Act and our rules, regulations, and policies, of Leap.

19. In addition, no issues have been raised with respect to the basic qualifications of AT&T. AT&T previously and repeatedly has been found qualified to hold Commission licenses.⁷⁰ We find that there is no reason to reevaluate the requisite citizenship, character, financial, technical, or other basic qualifications under the Communications Act and our rules, regulations, and policies, of AT&T.

V. POTENTIAL PUBLIC INTEREST HARMS

20. In reviewing applications involving a proposed transaction, the Commission evaluates the potential public interest harms, including potential competitive harms that may result from the transaction.⁷¹ The Commission undertakes a case-by-case review of the competitive effects of any increase in market concentration or in spectrum holdings in the relevant markets.⁷² The Commission's competitive analysis of wireless transactions focuses initially on markets where the acquisition of customers and/or spectrum would result in significant concentration of either or both, and thereby could lead to competitive harm.⁷³ In its analysis, the Commission has used an initial screen to help identify those markets that provide particular reason for further competitive analysis. As set out in various transactions orders, however, the Commission has not limited its consideration of potential competitive harms solely to markets identified by its initial screen, if it encounters other factors that may bear on the public interest inquiry.⁷⁴

A. Competitive Overview and Market Definitions

1. Competitive Overview

21. Horizontal transactions such as the proposed transaction, in which rival firms in the same market are combining, raise potential competitive concerns when the combined entity has the incentive

⁶⁹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10445 ¶ 29; *SoftBank-Sprint Order*, 28 FCC Rcd at 9653 ¶ 27; Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent to Assign and Transfer Licenses, WT Docket No. 12-240, *Memorandum Opinion and Order*, 27 FCC Rcd 16459, 16466 ¶ 18 (2012) (“*AT&T-WCS Order*”).

⁷⁰ See, e.g., Applications of AT&T Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC, WT Docket No. 13-56, *Memorandum Opinion and Order*, 28 FCC Rcd 12897, 12885-86 ¶ 17 (WTB 2013) (“*AT&T-Verizon Wireless-Grain Order*”); *AT&T-WCS Order*, 27 FCC Rcd at 16466-67 ¶ 19.

⁷¹ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶¶ 47-48, 10734 ¶ 95; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17598-99 ¶ 23, 17622-23 ¶ 81.

⁷² See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31; Applications of AT&T Inc. and Centennial Communications Corp. For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Leasing Arrangements, WT Docket No. 08-246, *Memorandum Opinion and Order*, 24 FCC Rcd 13915, 13938 ¶ 50 (2009) (“*AT&T-Centennial Order*”).

⁷³ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34.

⁷⁴ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 35; *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21 (recognizing the proposition that the “Commission is not . . . limited in its consideration of potential competitive harms solely to markets identified by its initial screen”); *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17609-10 ¶¶ 49-50 (recognizing that up to three markets could be triggered by the screen, but considering more broadly AT&T's post-transaction holdings under 1 GHz).

and the ability, either by itself or in coordination with other service providers, to raise prices, lower quality, or otherwise harm competition in a relevant market.⁷⁵ To begin our market-by-market analysis, we examine the likelihood of competitive harm by first estimating the extent to which market concentration, as measured by the Herfindahl-Hirschman Index (“HHI”), would increase as a result of the proposed transaction.⁷⁶ We assess the potential competitive effects, post-transaction, of these increases in market concentration. In our market-by-market analysis, we also examine the likely competitive effects of an increase in spectrum holdings on the marketplace.⁷⁷ Spectrum is an essential input in the provision of mobile wireless services, and ensuring that sufficient spectrum is available for incumbent licensees as well as potential new entrants is critical to promoting effective competition and innovation in the marketplace.⁷⁸ In our final analysis of the potential effects of increased market or spectrum concentration, we consider various other factors that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service providers; the number of rival firms that can offer competitive nationwide service plans; the coverage by technology of the firms’ respective networks; the rival firms’ market shares; the combined entity’s post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers.⁷⁹

2. Market Definitions

22. We begin our competitive analysis by determining the appropriate market definitions for the proposed transaction,⁸⁰ including a determination of the product market, the geographic market, the input market for spectrum suitable and available for the provision of mobile wireless services, and the market participants.

23. *Product Market.* In recent transactions, the Commission has defined the product market as a combined “mobile telephony/broadband services” product market that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).⁸¹

24. Public Knowledge argues that the relevant market for this transaction is the market for

⁷⁵ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34; *AT&T-Centennial Order*, 24 FCC Rcd at 13931-32 ¶ 34, 13939-42 ¶¶ 54, 56-57, 59, 61, 13948 ¶ 75; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17468-69 ¶¶ 40-43, 17484-85 ¶¶ 82-83, 17487-88 ¶¶ 91-92.

⁷⁶ To assess whether the increase in horizontal market concentration is significant or not, we consider the absolute level of the post-transaction HHI, a widely utilized measure of market concentration, as well as the change in the HHI. See section V.B.1. *infra*.

⁷⁷ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10446 ¶ 33; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17602 ¶ 31.

⁷⁸ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 20; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17601-02 ¶ 30.

⁷⁹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10454-56 ¶¶ 51-55; *AT&T-WCS Order*, 27 FCC Rcd at 16472 ¶ 34; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10725-26 ¶ 72.

⁸⁰ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 34; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 36; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 23.

⁸¹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 35; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 37; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24.

prepaid wireless service.⁸² Public Knowledge asserts that prepaid plans are distinct from postpaid plans because they often cost less, do not require lengthy contracts, and generally do not involve credit checks.⁸³ Public Knowledge cites to the Department of Justice Horizontal Merger Guidelines in support of its argument that a prepaid market for mobile wireless services exists, arguing that a hypothetical monopolist could easily and profitably impose a “small but significant and non-transitory price increase” in the prepaid market at the expense of customers.⁸⁴ Greenlining urges the Commission to adopt a combined mobile telephony/broadband services’ product market but recognize the existence of a separate submarket for “value-conscious services.”⁸⁵ Public Knowledge asserts that prepaid customers are distinct from the postpaid customers in that they may exhibit one of the following characteristics: a lower creditworthiness, lower employment rates, or less purchasing power.⁸⁶ Public Knowledge contends that AT&T, as well as other major providers, rely on separate stores, bands, pricing, support and service to differentiate the prepaid and postpaid markets.⁸⁷

25. The Applicants argue that there is no separate product market for prepaid or “value-conscious” services.⁸⁸ The Applicants assert that prepaid and postpaid offerings have increasingly overlapped in terms of devices, network quality, features, and price points, and recent marketplace developments have further blurred the line between “value” and other wireless offerings.⁸⁹ The Applicants claim that their market observations are confirmed by an analysis of survey data that provide information on subscribers switching between post-paid and pre-paid plans.⁹⁰ The Applicants claim that the results of this analysis show that there is significant switching by customers from postpaid to prepaid plans, and vice versa.⁹¹

26. We decline to modify our product market definition based on the record before us, but will consider potential product differentiation in the offering of prepaid or value-conscious wireless services, as appropriate, when we analyze the competitive effects. We continue to use the product market definition that the Commission has applied in recent transactions: a combined “mobile

⁸² See Public Knowledge Petition to Deny at 11-14; Public Knowledge Reply at 2-6.

⁸³ See Public Knowledge Petition to Deny at 12; Public Knowledge Reply at 4-5. See also David K. Smith (“Smith”) Petition to Deny at 9.

⁸⁴ See Public Knowledge Petition to Deny at 3 (citing *2010 DOJ/FTC Horizontal Merger Guidelines* at section 4).

⁸⁵ See Greenlining Petition to Deny at 5-7.

⁸⁶ See Public Knowledge Petition to Deny at 4-5 (claiming that prepaid customers have substantially less average revenue per user and they are more likely to be women).

⁸⁷ See Public Knowledge Petition to Deny at 4-5, 13 (citing Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 11-186, *Sixteenth Report*, 28 FCC Rcd 3700, FCC 13-34 (Mar. 21, 2013) (“*Sixteenth Annual Competition Report*”).

⁸⁸ See Joint Opposition at 21-24.

⁸⁹ See Joint Opposition at 22. See also Israel Declaration at ¶ 13 (asserting that one historical distinction between contract and no-contract plans was that providers would offer upfront handset subsidies that were recouped via payments over the life of the contract or a penalty for early termination; however, marketplace developments largely have rendered this distinction between contract and no-contract plans moot).

⁹⁰ See Joint Opposition at 22-23; Israel Reply Declaration at ¶¶ 14-16. The analysis uses deactivation surveys for both AT&T and Leap as well as a general industry survey to calculate percentages of subscribers that switch from a post-paid plan to a pre-paid plan, and vice versa. See Israel Reply Declaration at ¶¶ 14-15.

⁹¹ See Joint Opposition at 22-23 (citing Israel Reply Declaration at ¶¶ 14-16).

telephony/broadband services” product market that is comprised of mobile voice and data services, including mobile voice and data services provided over advanced broadband wireless networks (mobile broadband services).⁹² As set out in prior transaction proceedings, the product market we define encompasses differentiated services (*e.g.*, voice-centric or data-centric), devices (*e.g.*, feature phone, smartphone, tablet, etc.), and contract features (*e.g.*, prepaid vs. postpaid),⁹³ which are distinctions that wireless providers often recognize in their internal analyses of the marketplace.⁹⁴ While such distinctions may suggest the possibility of smaller markets nested within that product market, we find it unnecessary to examine that possibility in order to analyze the potential competitive effects of the proposed transaction. We consider these aspects of product differentiation, as appropriate, when we analyze the competitive effects of the transaction within the markets we define.

27. *Geographic Markets.* In prior transactions, the Commission has found that the relevant geographic markets for certain wireless transactions generally are “local” and also has evaluated a transaction’s competitive effects at the national level where a transaction exhibits certain national characteristics that provide cause for concern.⁹⁵ As discussed below, for this proposed transaction, we continue to use CMAs as the local geographic markets, and in addition, analyze the nationwide competitive effects on the mobile telephony/broadband services market.⁹⁶

28. Youghiogheny Communications and Public Knowledge argue that Leap is an important local and national wireless carrier and that the proposed transaction will have a harmful effect at the national level for prepaid wireless services.⁹⁷ The Applicants contend that it does not matter whether the geographic market is viewed as local or national in the proposed transaction because AT&T and Leap are not close competitors and, they assert, Leap exerts no influence on the competitive decision making of AT&T.⁹⁸

29. Because most consumers use their mobile telephony/broadband services at or close to where they live, work, and shop, they purchase mobile telephony/broadband services from service

⁹² See, *e.g.*, *Alaska Wireless Order*, 28 FCC Rcd at 10447 ¶ 35; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 37; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 24.

⁹³ See, *e.g.*, *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10717 ¶ 53 n.119; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶ 33; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8721 ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37. The Commission has previously determined that there are separate relevant product markets for interconnected mobile voice and data services, and also for residential and enterprise services, but found it reasonable to analyze all of these services under a combined mobile telephony/broadband services product market. See *AT&T-Qualcomm Order*, 26 FCC Rcd at 17603 ¶33; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8721 ¶ 35; *AT&T-Centennial Order*, 24 FCC Rcd at 13932 ¶ 37.

⁹⁴ See, *e.g.*, ATT-FCC-001306080 at 2-5; ATT-FCC-000978727.

⁹⁵ See, *e.g.*, *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16468 ¶ 25; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 54.

⁹⁶ See *e.g.*, *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 28; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 58.

⁹⁷ See Public Knowledge Petition to Deny at 16 (arguing that Leap is an important disruptive force in the U.S. prepaid market); Youghiogheny Communications Petition to Deny at 3 (stating that “[t]here can be no doubt that the loss of Leap would leave a significant hole in both the national and the local market for prepaid and less costly wireless services”); Youghiogheny Communications Reply at 4-5.

⁹⁸ See Public Interest Statement at 23-26. See also Israel Declaration at ¶¶ 29-30, 32-38.

providers that offer and market services locally.⁹⁹ Service sold in distant locations is generally not a good substitute for service near a consumer's home or work.¹⁰⁰ In addition, service providers compete at the local level in terms of coverage and service quality.¹⁰¹ Consistent with past transactions, we will use CMAs as the local geographic markets in which we analyze the potential competitive harms arising from spectrum aggregation as a result of these transactions.¹⁰²

30. However, as the Commission has previously recognized, two key competitive variables – monthly prices and service plan offerings – do not vary for most providers across most geographic markets.¹⁰³ The four nationwide mobile telephony/broadband service providers (AT&T, Verizon Wireless, Sprint, and T-Mobile), as well as some other providers, including Leap, set the same rates for a given plan everywhere and advertise nationally.¹⁰⁴ In addition, certain key elements in the provision of mobile wireless services, such as the development of mobile broadband equipment and devices, are done largely on a national scale.¹⁰⁵

31. For the purposes of evaluating the competitive effects of the proposed transaction, we use local geographic markets, but also analyze its potential national effects. Although the proposed transaction does not cover all markets in the United States, it does span 356 CMAs that are geographically dispersed throughout the United States, 51 of which are Top 100 markets.¹⁰⁶ Moreover, AT&T is currently the second largest nationwide service provider in the United States, and Leap, a multi-metropolitan service provider, is the sixth largest provider. Leap covers approximately 31 percent of the population nationwide with its network footprint, and 100 percent of this population is also covered by AT&T.¹⁰⁷ As a result of the proposed transaction, in the markets in which there is geographical overlap of spectrum holdings, the combined company would cover approximately 44 percent of the population in the United States.¹⁰⁸ We therefore find that, in analyzing the relevant geographic markets, it is appropriate to consider any potential competitive effects that may result from the proposed transaction on both local and national markets.

⁹⁹ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9657 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56; see also *Sixteenth Annual Competition Report*, 28 FCC Rcd at 3735 ¶¶ 22-23.

¹⁰⁰ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10448 ¶ 37; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56.

¹⁰¹ See *id.*

¹⁰² See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 26; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 56; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604 ¶ 34.

¹⁰³ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718 ¶ 57; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17604-05 ¶¶ 34-37.

¹⁰⁴ See, e.g., *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10718-19 ¶ 57; *Sixteenth Annual Competition Report*, 28 FCC Rcd at 3797-3818 ¶¶ 137-174.

¹⁰⁵ See *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 27; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 57.

¹⁰⁶ In those 356 CMAs, Leap holds 10 to 50 megahertz of spectrum, including 10 to 40 megahertz of spectrum in the Top 100 markets. In addition, Leap has a substantial market presence in 38 CMAs, primarily in Texas, California, Arkansas, Colorado, and Arizona, including 17 Top 100 markets (as ranked by 2010 U.S. Census data).

¹⁰⁷ See Mosaik, January 2014.

¹⁰⁸ See *Accepted for Filing PN*, 28 FCC Rcd at 12777.

32. *Input Market for Spectrum.* When a proposed transaction would increase the concentration of spectrum holdings in any local market, the Commission evaluates the acquiring firm's post-transaction holdings of spectrum that is "suitable" and "available" in the near term for the provision of mobile telephony/broadband services.¹⁰⁹ The Commission previously has determined that cellular, broadband PCS, Specialized Mobile Radio ("SMR"), and 700 MHz band spectrum, as well as Advanced Wireless Services ("AWS-1") and Broadband Radio Service ("BRS") spectrum where available,¹¹⁰ and most recently, Wireless Communications Services ("WCS") spectrum, all meet this definition, and they have therefore been included in the initial spectrum screen.¹¹¹ The Commission traditionally has applied an initial screen to help identify local markets where a proposed transaction might raise particular concerns with respect to spectrum holdings.¹¹² The current screen identifies local markets where an entity would hold more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services post-transaction.¹¹³

33. RWA and Youghioghny Communications set forth arguments regarding the type and amount of spectrum the Commission should include as suitable and available spectrum for mobile telephony/broadband services. Youghioghny Communications addresses the availability of BRS spectrum as it relates to certain markets in south Texas that are involved in the proposed transaction.¹¹⁴ In particular, Youghioghny Communications asserts that BRS service is actually available to consumers in only three of these south Texas markets.¹¹⁵ Concerning the south Texas markets identified in their petition,¹¹⁶ Youghioghny Communications claims that although BRS spectrum has been "transitioned" in these markets, the spectrum is not available to consumers for mobile broadband service and therefore should not be considered "operating."¹¹⁷ In its comments, RWA contends that the current spectrum screen should be modified to include only 14 megahertz of SMR spectrum and 70 megahertz of 700 MHz Band spectrum.¹¹⁸

34. For purposes of our analysis of the instant transaction, we decline to modify the current input market for spectrum and continue to apply the spectrum screen that the Commission has used in

¹⁰⁹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10448-49 ¶ 38; *SoftBank-Sprint Order*, 28 FCC Rcd at 9657-58 ¶ 39; *AT&T-WCS Order*, 27 FCC Rcd at 16469 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59.

¹¹⁰ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10449 ¶ 38; *SoftBank-Sprint Order*, 28 FCC Rcd at 9658 ¶ 39; Sprint Nextel Corporation and Clearwire Corporation Applications for Consent To Transfer Control of Licenses, Leases, and Authorizations, WT Docket No. 08-94, *Memorandum Opinion and Order*, 23 FCC Rcd 17570, 17591-92 ¶ 53 (2008).

¹¹¹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10449 ¶ 38; *SoftBank-Sprint Order*, 28 FCC Rcd at 9659-60 ¶ 42; *AT&T-WCS Order*, 27 FCC Rcd at 16470-71 ¶ 31.

¹¹² See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10449 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16470 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59.

¹¹³ See *Alaska Wireless Order*, 28 FCC Rcd at 10449 ¶ 38; *AT&T-WCS Order*, 27 FCC Rcd at 16470 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17473 ¶ 54.

¹¹⁴ See Youghioghny Communications Petition to Deny at 6-8, Appendix A.

¹¹⁵ See *id.* at 6, Appendix A.

¹¹⁶ See *id.* at Appendix A.

¹¹⁷ See *id.* at 7, Appendix A.

¹¹⁸ See RWA Comments at 6-7.

recent mobile wireless transactions.¹¹⁹ Regarding Youghioghenny Communications' arguments concerning the suitability and availability of BRS spectrum, we note that, under its analysis, it does not consider BRS spectrum to be suitable and available in a county unless Clearwire is actually providing commercial service in that county.¹²⁰ The Commission has held that 55.5 megahertz of BRS spectrum is suitable and available in a market once the BRS spectrum in that market has transitioned to the new band plan established by the Commission in 2004.¹²¹ In each of the south Texas markets identified by Youghioghenny Communications, BRS licensees have transitioned to the new band plan.¹²² Youghioghenny Communications has failed to provide any justification for fundamentally modifying the Commission's approach and instead including spectrum in the screen in a local market only after it is being used as part of a commercial service. Concerning the other modifications of the spectrum screen, including RWA's request, we note that this issue and the type and amount of spectrum included in the input market generally, along with a range of other related issues, are being considered by the Commission in its ongoing review of its policies regarding mobile spectrum holdings.¹²³

35. *Market Participants.* In previous transactions, the Commission has considered only facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, and WCS spectrum to be market participants, but has assessed the competitive effect of MVNOs and resellers.¹²⁴

36. The Applicants assert that Leap offers its facilities-based services to less than one-third of the U.S. population,¹²⁵ and its attempt to expand outside its retail footprint through an MVNO agreement has "fallen short of expectations."¹²⁶ Youghioghenny Communications argues that Leap has held itself out to be a national provider, by both its facilities-based operations and its MVNO capabilities.¹²⁷ Public

¹¹⁹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10449 ¶ 38; *SoftBank-Sprint Order*, 28 FCC Rcd at 9659-60 ¶ 42; *AT&T-WCS Order*, 27 FCC Rcd at 16470-71 ¶ 31.

¹²⁰ See Youghioghenny Communications Petition to Deny at Exhibit A ("Each zip code was then run through Clearwire's online service locator (at Clearwire.com) to determine whether or not Clearwire was available in that particular area. Counties that contain zip codes with Clearwire service available contain a 'YES' under 'BRS Available?' on the above chart. Any county listed with a 'NO' in the BRS column did not have Clearwire service available in any of the zip codes within its boundaries.")

¹²¹ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9658 n.120; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17606 n.120.

¹²² See post-transition notifications filed in WT Docket No. 06-136.

¹²³ See generally Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269, *Notice of Proposed Rulemaking*, 27 FCC Rcd 11710 (2012) ("*Mobile Spectrum Holdings NPRM*"). In the *Mobile Spectrum Holdings NPRM*, the Commission noted that during the pendency of the rulemaking proceeding, it would continue to apply its current case-by-case approach to evaluate mobile spectrum holdings in secondary market transactions and initial spectrum licensing after auctions. See *Mobile Spectrum Holdings NPRM*, 27 FCC Rcd 11710, 11718 ¶ 16 n.59. See also *AT&T-WCS Order*, 27 FCC Rcd at 16470 ¶ 30.

¹²⁴ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 43; Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc. for Consent to Transfer of Control of Licenses and Authorizations, WT Docket No. 12-301, *Memorandum Opinion and Order and Declaratory Ruling*, 28 FCC Rcd at 2333-34 ¶ 34, 2334-5 ¶ 37 (WTB, IB 2013) ("*T-Mobile-MetroPCS Order*").

¹²⁵ See Public Interest Statement at ii.

¹²⁶ See *id.* at 11.

¹²⁷ See Youghioghenny Communications Petition to Deny at 3.

Knowledge contends that MVNOs are dependent on the networks of facilities-based providers and they are fundamentally limited in the ways they can compete with facilities-based providers and cannot, for instance, improve their networks in particular areas to gain a competitive edge.¹²⁸ In response, the Applicants maintain that MVNOs are significant providers of prepaid and value services.¹²⁹ The Applicants argue that TracFone, for example, is the largest single provider of prepaid service in the country, with the ability to serve customers nationally, and that many other MVNOs are also competitors.¹³⁰ The Applicants assert that, unlike other MVNOs, Leap has a limited geographic footprint and is unable to offer 4G LTE service.¹³¹ The Applicants maintain that Leap's MVNO operations have not made Leap a "meaningful national competitor" and that Leap's 3G MVNO offering has only attracted a relatively small number of customers.¹³²

37. For purposes of our analysis of the instant transaction, we note that Leap offers both facilities-based service options and MVNO service options. As in previous transactions, we will exclude MVNOs and resellers from consideration when computing initial concentration measures,¹³³ and thus, facilities-based service providers only will be taken into account in our calculations of market concentration. However, MVNOs and resellers may provide additional constraints against any anticompetitive behavior.¹³⁴ Therefore, as in previous transactions, we will consider only facilities-based entities providing mobile telephony/broadband services using cellular, PCS, SMR, 700 MHz, AWS-1, BRS, and WCS spectrum to be market participants, but will continue to assess the effect of MVNOs and resellers in our competitive evaluation.¹³⁵

B. Competitive Effects of the Proposed Transaction

38. In analyzing the competitive effects of the proposed transaction, we consider the various arguments in the record, which raise issues regarding the potential effects of the transaction in particular local markets and on a broader national scale. We also conduct our own market-by-market review of certain local markets where there appears to be a particular potential for competitive harm.

39. As an initial step, we apply the Commission's two-part initial screen to identify local geographic markets that may be of particular competitive concern in this transaction because of the loss of Leap as a competitor.¹³⁶ The number of local markets triggered by the screen also helps identify the potential for competitive effects that are broader than individual markets. However, the initial screen is only the beginning of our competitive analysis because we then analyze the impact of the proposed

¹²⁸ See Public Knowledge Reply at 6-8. See also Public Knowledge Petition to Deny at 15-16.

¹²⁹ See Joint Opposition at 28.

¹³⁰ See *id.* at 28-29.

¹³¹ See *id.* at 29.

¹³² See Joint Opposition at 20; Public Interest Statement at 11; Public Interest Statement, Hutcheson Declaration at ¶¶ 8, 13 ("Hutcheson Declaration").

¹³³ See, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8722 ¶ 41; *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21563 ¶ 92.

¹³⁴ See, e.g., *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8724 ¶ 41; *AT&T-Centennial Order*, 24 FCC Rcd at 13936 ¶ 45.

¹³⁵ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10449-50 ¶ 41; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 43.

¹³⁶ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 44; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720-21 ¶ 32.

transaction on the local markets identified by the screen.¹³⁷ As set out in various transactions orders, our consideration of potential competitive harms is not limited solely to markets identified by the screen, we also consider other factors that may bear on our public interest inquiry.¹³⁸

40. After application of the initial screen, we address the most significant competitive arguments raised by parties that are not specific to individual local markets. We then turn to a market-by-market analysis before finishing with a discussion of roaming and other issues raised in the record.

1. Initial Screen

41. As discussed above, we apply a two-part initial screen to help identify local markets where competitive concerns are more likely.¹³⁹ The first part of the screen is based on the size of the post-transaction HHI, and the change in the HHI.¹⁴⁰ The second part of the screen, which is applied on a county-by-county basis, identifies CMAs where an entity would hold more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services post-transaction.¹⁴¹

42. *Record.* RWA asserts that the Commission should promulgate new industry-wide rules so that a provider cannot hold more than 25 percent of all suitable or available spectrum and no more than 40 percent of suitable and available spectrum below 1 GHz.¹⁴² If the instant transaction is reviewed prior to the Commission setting forth new rules on spectrum holdings,¹⁴³ RWA contends that the Commission should require AT&T to divest or lease spectrum in excess of a 25 percent threshold or permit AT&T to hold greater than 25 percent of all suitable and available spectrum and 40 percent of suitable and available spectrum below 1 GHz in any given market with certain conditions regarding roaming and mobile devices.¹⁴⁴ CCA also argues for a new threshold for spectrum below 1 GHz, and they suggest that this

¹³⁷ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *AT&T-WCS Order*, 27 FCC Rcd at 16467 ¶ 21.

¹³⁸ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 35; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10716 ¶ 48.

¹³⁹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 44; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720-21 ¶ 32.

¹⁴⁰ The initial HHI screen identifies, for further case-by-case market analysis, those markets in which, post-transaction: (1) the HHI would be greater than 2800 and the change in HHI would be 100 or greater; or (2) the change in HHI would be 250 or greater, regardless of the level of the HHI. See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42 n. 135; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8724-25 ¶ 42.

¹⁴¹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *AT&T-WCS Order*, 27 FCC Rcd at 16470 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59. In particular, the spectrum screen is triggered where the Applicants would have, on a market-by-market basis, a 10% or greater interest in: 102 megahertz or more of cellular, PCS, SMR, 700 MHz, and WCS spectrum, where neither BRS nor AWS-1 spectrum is available; 121 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 132 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 151 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available. See *AT&T-WCS Order*, 27 FCC Rcd at 16471 ¶ 33 n.94.

¹⁴² See RWA Comments at i, 3-7, 9-10; see generally RWA Reply.

¹⁴³ RWA also argues that until the Commission completes its review in the mobile spectrum holdings proceeding, the Commission should review any proposed spectrum transaction, including this transaction, with “a reduced spectrum screen and an analysis that fosters the existence of at least four separate carriers with sufficient spectrum in every affected county.” RWA Comments at 4-5.

¹⁴⁴ See RWA Comments at i, 5-10; RWA Reply at 3-4. RWA asserts that the Commission should impose the following conditions for the markets where AT&T’s spectrum holdings would exceed RWA’s recommended 25 (continued....)

threshold should be one-quarter of the “useable spectrum in a given market.”¹⁴⁵ In addition, CCA further contends that there should be “a new national threshold set somewhat below the level that would correspond to one-third of the spectrum deemed suitable and available for mobile broadband.”¹⁴⁶ While Public Knowledge does not assert that the Commission should modify its existing spectrum screen, Public Knowledge maintains that the Commission should consider analyzing AT&T’s spectrum concentration by band.¹⁴⁷ Public Knowledge contends that, for example, AT&T would have 50 percent or more of the available PCS spectrum post-transaction in a significant number of counties.¹⁴⁸

43. Several petitioners contend that the application of the spectrum screen triggers many local markets and gives rise to competitive concerns at the local level. Public Knowledge asserts that the instant transaction triggers the spectrum screen in 40 CMAs¹⁴⁹ in nearly two dozen states.¹⁵⁰ In particular, Public Knowledge claims that Nevada, Texas, and Idaho would have the largest increases in spectrum concentration post-transaction.¹⁵¹ In addition, CCA argues that the spectrum screen is triggered in local markets that cover approximately seven million people and, they contend, the Applicants should therefore be required to divest spectrum in every local market where the proposed transaction exceeds the spectrum screen.¹⁵² Moreover, Public Knowledge advocates for a thorough case-by-case review of the local markets in order to fully measure the proposed threat of harm that may occur as a result of spectrum consolidation.¹⁵³

44. RWA, Youghioghny Communications, and Mr. Smith urge the Commission to hold the proposed transaction in abeyance until the Commission completes its mobile spectrum holdings rulemaking proceeding.¹⁵⁴ Mr. Smith asserts that this rulemaking proceeding will address “the harmful threats of greater market power and spectrum consolidation in the wireless industry,” which he argues are

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percent threshold: (1) offer data roaming at rates that are on par with what AT&T charges MVNOs; (2) offer fully interoperable devices to AT&T customers; and (3) ensure that all mobile devices sold by AT&T are capable of being unlocked by consumers and used on the networks of those carriers who utilize the same technology as AT&T.

¹⁴⁵ See CCA Petition to Condition at 13. See also CCA Reply at 9.

¹⁴⁶ See CCA Petition to Condition at 13. CCA does assert that the Commission should continue to use its current one-third threshold for evaluating an entity’s aggregated spectrum holdings. See CCA Petition to Condition at 13.

¹⁴⁷ See Public Knowledge Petition to Deny at 5-6; Public Knowledge Reply at 11.

¹⁴⁸ See Public Knowledge Petition to Deny at 5; Public Knowledge Reply at 11. Public Knowledge claims that the proposed transaction would result in AT&T having 50% or greater of all available PCS spectrum in 74 counties, with a population of nearly 5 million, and more than 33% of all PCS spectrum in almost one-third of all counties. See Public Knowledge Petition to Deny at 5.

¹⁴⁹ See Public Knowledge Petition to Deny at 6; Public Knowledge Reply at 8. Public Knowledge argues that the Applicants count of CMAs triggering the screen is different from the number calculated by Public Knowledge because of methodological differences. See Public Knowledge Reply at 9-10.

¹⁵⁰ See Public Knowledge Petition to Deny at 5.

¹⁵¹ See Public Knowledge Petition to Deny at 5. Public Knowledge contends that in Nevada, Texas, and Idaho there would be an increase in concentration at 21%, 18%, and 14% over the spectrum screen, respectively. See *id.*

¹⁵² See CCA Reply at 10-11.

¹⁵³ See Public Knowledge Petition to Deny at 11.

¹⁵⁴ See Smith Petition to Deny at 1-2, 13-15; Smith Reply at 1, 3-6; RWA Comments at 5; Youghioghny Communications Petition to Deny at 10.

the same threats posed by the instant transaction.¹⁵⁵ CCA maintains that the Commission should modify its spectrum screen by completing the mobile spectrum holdings proceeding “immediately” because this will allow for increased clarity and consistency in the upcoming auctions.¹⁵⁶ Youghioghenny Communications further contends that instead of deciding on transactions such as this transaction during the pendency of the mobile spectrum holdings rulemaking, the Commission should either hold a hearing or condition any approval of the proposed transaction on the outcome of that rulemaking proceeding.¹⁵⁷

45. Regarding the current spectrum screen, the Applicants argue that the Commission should continue to apply the existing screen, which applies to all spectrum.¹⁵⁸ The Applicants apply the existing screen and assert that the screen is triggered in 38 CMAs.¹⁵⁹ The Applicants also assert that the Commission should not single out PCS spectrum for a separate screen.¹⁶⁰ Concerning the pending mobile spectrum holdings proceeding, the Applicants contend that the Commission should not modify its current screen during the pendency of that proceeding.¹⁶¹ The Applicants argue that, as the Commission has done in the past, it should address the spectrum proposals put forth in the mobile spectrum holdings proceeding and apply the existing screen to the instant transaction.¹⁶² Further, the Applicants assert that the Commission should reject the requests by Youghioghenny Communications and Mr. Smith to freeze all secondary spectrum market transactions until the mobile spectrum holdings proceeding is completed.¹⁶³

46. *Discussion.* For purposes of the instant transaction, we decline to modify the current spectrum screen with respect to trigger level and weighting or separate screen based on type of spectrum, as requested by certain parties. As noted above, the Commission is reviewing these issues, along with a number of related issues, in the ongoing mobile spectrum holdings rulemaking proceeding,¹⁶⁴ and we will not hold the proposed transaction in abeyance.

47. Accordingly, we apply our two-part initial screen to this transaction to help identify local markets where competitive concerns are more likely.¹⁶⁵ For purposes of determining HHIs in this transaction, we use June 2013 NRUF data, which includes phone number usage by all

¹⁵⁵ See Smith Reply at 1, 3-6; see also Smith Petition to Deny at 1-2, 13-15. Similarly, CCA argues that the spectrum screen “should account for the unique competitive challenges facing today’s consolidating industry.” CCA Petition to Condition at 13; CCA Reply at 9.

¹⁵⁶ See CCA Petition to Condition at 13-14. See also CCA Reply at 9.

¹⁵⁷ See Youghioghenny Communications Petition to Deny at 9-10. See also Letter from Donald J. Evans, Counsel for Youghioghenny Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193, at 2 (filed Dec. 16, 2013) (“Youghioghenny Communications Dec. 16, 2013 *Ex Parte*”).

¹⁵⁸ See Joint Opposition at 17.

¹⁵⁹ See *id.* at 12.

¹⁶⁰ See *id.* at 17.

¹⁶¹ See *id.*

¹⁶² See *id.* at 17-18.

¹⁶³ See *id.* at 18.

¹⁶⁴ See *Mobile Spectrum Holdings NPRM*, 27 FCC Rcd at 11725-28 ¶¶ 33-39.

¹⁶⁵ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *SoftBank-Sprint Order*, 28 FCC Rcd at 9660 ¶ 44; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8720-21 ¶ 32.

telecommunications service providers.¹⁶⁶ Consistent with our discussion of the local geographic markets above, in calculating HHIs and the change in the HHI, we analyze service provider data by CMA. The second part of the screen (which we apply on a county-by-county basis) identifies CMAs where an entity would hold more than approximately one-third of the total spectrum suitable and available for the provision of mobile telephony/broadband services post-transaction.¹⁶⁷

48. Our application of the HHI screen to the proposed transaction triggers 84 local markets.¹⁶⁸ In applying the spectrum screen, 38 local markets are triggered.¹⁶⁹ There are 18 local markets triggered by both the HHI screen and the spectrum screen.¹⁷⁰ Of the markets triggered by the HHI screen, 33 local markets are considered Top 100 markets.¹⁷¹ There is one local market that was triggered by the HHI screen and the spectrum screen that is a Top 100 market.¹⁷² We evaluate whether it is likely that there would be any competitive or other public interest harms resulting from increased market or spectrum concentration in these markets.

2. Competitive Analysis

49. The market for mobile telephony/broadband services in the United States is differentiated. Service providers compete not only on the basis of price but also on other variables such as plan features, call quality, geographic coverage, and customer service.¹⁷³ Competition may be harmed

¹⁶⁶ These data indicate the number of assigned phone numbers that a wireless service provider has in a particular wireline rate center. Rate centers are geographic areas used by local exchange carriers for a variety of reasons, including the determination of toll rates. See HARRY NEWTON, NEWTON'S TELECOM DICTIONARY: 19TH EXPANDED & UPDATED EDITION 660 (July 2003). All mobile wireless providers must report to the FCC the quantity of their phone numbers that have been assigned to end users, thereby permitting the Commission to calculate the total number of mobile subscribers. For purposes of geographical analysis, the rate center data can be associated with a geographic point, and all of those points that fall within a county boundary can be aggregated together and associated with much larger geographic areas based on counties.

¹⁶⁷ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10450 ¶ 42; *AT&T-WCS Order*, 27 FCC Rcd at 16469-70 ¶ 29; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10719 ¶ 59. In particular, the spectrum screen is triggered where the Applicants would have, on a market-by-market basis, a 10% or greater interest in: 102 megahertz or more of cellular, PCS, SMR, 700 MHz, and WCS spectrum, where neither BRS nor AWS-1 spectrum is available; 121 megahertz or more of spectrum, where BRS spectrum is available, but AWS-1 spectrum is not available; 132 megahertz or more of spectrum, where AWS-1 spectrum is available, but BRS spectrum is not available; or 151 megahertz or more of spectrum where both AWS-1 and BRS spectrum are available. See *AT&T-WCS Order*, 27 FCC Rcd at 16471 ¶ 33 n.94.

¹⁶⁸ See Appendix C.

¹⁶⁹ See *id.*

¹⁷⁰ See *id.*

¹⁷¹ See *id.*

¹⁷² The one Top 100 market that was triggered by the HHI screen and the spectrum screen is McAllen-Edinburg-Mission, TX (CMA 128). See Appendix C.

¹⁷³ While service providers can change some of these conduct variables, for example, price and customer service, relatively quickly, other variables – particularly non-price variables such as quality and coverage – require investments in spectrum or infrastructure and are not easily modified. See, e.g., Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent To Transfer Control of Licenses, Authorizations, and Spectrum Manager and *De Facto* Transfer Leasing Arrangements and Petition For Declaratory Ruling that the Transaction Is Consistent with Section 310(b)(4) of the Communications Act, WT Docket No. 08-95, *Memorandum Opinion and Order and Declaratory Ruling*, 23 FCC Rcd 17444, 17485 ¶ 85 (2008) (“*Verizon Wireless-ALLTEL Order*”); Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corporation, WT Docket No. 04-70, (continued....)

either through unilateral actions by the combined entity, or through coordinated interaction among service providers competing in the relevant markets. Unilateral effects arise when the merged firm finds it profitable to alter its behavior following the merger by increasing its price or otherwise harming competition.¹⁷⁴ In the case of the provision of mobile telephony/broadband services, in addition to increasing prices, this might take the form of delaying improvements in service quality, adversely adjusting the features of a service offering without changing the price of the plan, or reducing the rate of new product development or other innovation in a relevant market. Coordinated effects arise when firms take actions that are profitable for each of them only as a result of the accommodating reactions of others.¹⁷⁵ Either or both unilateral and coordinated effects may arise from a proposed transaction, and the distinction between them is not always clear cut.¹⁷⁶ In the record, no one directly argues that coordinated effects may arise from this proposed transaction.

50. Below we address competitive concerns in the record with respect to any unilateral effects and other potential competitive concerns arising out of this proposed transaction. In reviewing the application involving the proposed transaction, we first discuss arguments related to the loss of Leap as an independent facilities-based competitor. These arguments include claims that (1) Leap is a disruptive force in the wireless market and has ability to act as a maverick; (2) the loss of Leap as a substitute to AT&T would generate upward pricing pressure on the merged entity's services post-transaction; and (3) the loss of Leap as a value provider in competition with Aio Wireless in certain market segments would cause competitive harms in that market segment. We then undertake a case-by-case review of markets where the acquisition of customers and/or spectrum would result in significant concentration of either or both.¹⁷⁷

a. General Arguments Regarding Loss of Leap as an Independent Facilities-Based Provider

(i) Record

51. Many petitioners raise general concerns about the loss of Leap as an independent facilities-based provider. RWA contends that the loss of Leap as an independent, facilities-based provider would separate the marketplace into two distinct groups: small, rural, and local providers on one side and on the other side, four nationwide providers, harming consumers.¹⁷⁸ Youghioghny Communications asserts that AT&T and Leap have repeatedly characterized Cricket as a national carrier

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Memorandum Opinion and Order, 19 FCC Rcd 21522, 21570 ¶ 116 (2004).

¹⁷⁴ See, e.g., Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, August 19, 2010, at § 6, p. 20 (“2010 DOJ/FTC Horizontal Merger Guidelines”) (“A merger between firms selling differentiated products may diminish competition by enabling the merged firm to profit by unilaterally raising the price of one or both products above the pre-merger level.”). See also, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10451 ¶ 44; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336 ¶ 42; *AT&T-Centennial Order*, 24 FCC Rcd at 13939-40 ¶ 54; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17485 ¶ 84.

¹⁷⁵ A merger may diminish competition by enabling or encouraging post-merger coordinated interaction among firms in the relevant market that harms customers. *2010 DOJ/FTC Horizontal Merger Guidelines* at § 7, p. 24. See also, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10460-61 ¶ 65; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2336-37 ¶ 43; *Verizon Wireless-ALLTEL Order*, 23 FCC Rcd at 17491 ¶ 101; *AT&T-Centennial Order*, 24 FCC Rcd at 13942 ¶ 59.

¹⁷⁶ See *2010 DOJ/FTC Horizontal Merger Guidelines* at § 2. See also, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10446 ¶ 33 n.104.

¹⁷⁷ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9656 ¶ 34.

¹⁷⁸ See RWA Comments at 2.

in filings before the Commission and have argued that the elimination of Cricket as an independent player in the national market reduces the number of national facilities-based actors from five to four.¹⁷⁹ CCA, Greenlining, and Youghioghenny Communications, for instance, argue that the proposed transaction would result in harm to consumers because Leap is an important competitor.¹⁸⁰ Mr. Smith argues that the proposed transaction would harm competition at the local level because it would eliminate a chief local competitor and reduce consumer choice.¹⁸¹

52. The Applicants contend that Leap does not compete as a facilities-based provider at the national level, and that because this proposed transaction does not reduce the number of national wireless providers, it will not have an adverse impact on national competition.¹⁸² The Applicants assert that Leap's declining presence in the markets in which it operates demonstrates its current market share, which they claim, overstates Leap's current, and particularly its future, competitive prospects.¹⁸³ The Applicants contend that since 2011, Leap's competitive significance has declined significantly.¹⁸⁴ In addition, the Applicants claim that Leap has deployed LTE in only a small portion of its network footprint and Leap's financial resources and limited spectrum depth make it uneconomic to upgrade its current 3G CDMA platform to LTE across its network.¹⁸⁵ Leap asserts that as wireless data traffic continues to rise, the constraints on Leap's LTE deployment will likely increasingly hamper its ability to compete with national wireless service providers.¹⁸⁶ Finally, the Applicants assert that Leap's MVNO operations have not made Leap a "meaningful national competitor."¹⁸⁷

53. *Loss of a Maverick Competitor.* Some petitioners express particular concern about the effects of eliminating Leap as a competitor on the market because, they contend, Leap is a disruptive or

¹⁷⁹ See Youghioghenny Communications Reply 4-5.

¹⁸⁰ See CCA Petition to Condition at 5-7; CCA Reply at 4-5; Greenlining Petition to Deny at 8-9; Youghioghenny Communications Petition to Deny at 18-21; Youghioghenny Communications Dec. 16, 2013 *Ex Parte* at 2-3. See also Letter from Alan Pearce and Martyn Roetter, Information Age Economics, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193, at 1 (filed Feb. 28, 2014) ("IAE Feb. 28, 2014 *Ex Parte*").

¹⁸¹ See Smith Reply at 8-9.

¹⁸² See Public Interest Statement at iii, 24-34; Joint Opposition at 10, 19-21.

¹⁸³ See Joint Opposition at 32.

¹⁸⁴ See Joint Opposition at 19 (asserting that Leap has lost an estimated 22 percent of its subscriber base and saw its estimated national market share decline to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent between March 31, 2012 and June 30, 2013). See *id.* According to Leap, in response to this decline in subscribership, Leap implemented cost cutting initiatives and made changes to its wireless plans, including the elimination of its daily Cricket PAYGo (pay-as-you-go) plan in October of 2012. See Leap Wireless International, LLC, SEC Form 10-K, at 3 (filed Feb. 25, 2013), available at <http://www.sec.gov/Archives/edgar/data/1065049/000106504913000003/leap-dec2012q4x10k.htm> (last visited Mar. 11, 2014); Hutcheson Declaration at ¶¶ 5-6. See also Leap's Cricket dumps PAYGo daily plans, <http://www.fiercewireless.com/story/leaps-cricket-dumps-paygo-daily-plans/2012-10-24> (last visited Mar. 10, 2014). Leap continues to offer *monthly* Cricket PAYGo plans. See <http://www.leapwireless.com/brands> (last visited Mar. 10, 2014).

¹⁸⁵ See Joint Opposition at 19. See also Public Interest Statement, Hutcheson Declaration at ¶¶ 5-7, 9-13.

¹⁸⁶ See Hutcheson Declaration at ¶¶ 9, 11.

¹⁸⁷ See Joint Opposition at 20. See also Hutcheson Declaration at ¶¶ 13-15.

maverick competitor.¹⁸⁸ Mr. Smith asserts that Leap serves a valuable function at both the national and local levels, challenging the existing market leaders to offer competitive prices and innovative services.¹⁸⁹ Mr. Smith contends that Leap plays a critical role at the national level, and that Leap has developed industry-changing products, such as Muve Music.¹⁹⁰ Similar to Mr. Smith's contentions, RWA argues that the proposed transaction would result in denying consumers competitive pricing and innovative services and technologies.¹⁹¹ Public Knowledge argues that Leap is a disruptive force in the prepaid market because Leap was one of the first prepaid providers to offer unlimited talk, text, and data offerings as well as being the first U.S. prepaid providers to offer the iPhone.¹⁹²

54. In response to the petitioners' arguments that Leap is a "disruptive maverick," the Applicants contend that a firm cannot be a maverick if the provider has not affected competition significantly.¹⁹³ The Applicants assert that this term cannot be applied to a provider such as Leap because it has been losing market share and has not evoked competitive responses.¹⁹⁴

55. *Upward Pricing Pressure.* The Applicants also argue that loss of Leap would not materially affect the pricing or other key competitive decisions of the nationwide wireless providers,¹⁹⁵ and that, in particular, this transaction is unlikely to lead to significant upward pressure on post-transaction prices.¹⁹⁶ The Applicants claim that AT&T and Leap are not close substitutes, and that Sprint and T-Mobile are closer substitutes to Leap than AT&T.¹⁹⁷ The Applicants analyze porting data obtained

¹⁸⁸ See CCA Petition to Condition at 5-6; Youghioghny Communications Petition to Deny at 18-21; Youghioghny Communications Reply at 4; Smith Petition to Deny at 6-7; Smith Reply at 6-10; Public Knowledge Petition to Deny at 8-10, 16. See also Letter from Donald J. Evans, Counsel for Youghioghny Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193, at 2 (filed Jan. 29, 2014). ("Youghioghny Communications Jan. 29, 2014 *Ex Parte*").

¹⁸⁹ See Smith Reply at 6-8; Smith Petition to Deny at 9-10.

¹⁹⁰ See Smith Reply at 7-8 (noting that AT&T and Leap argued that in 2011 Leap was a disruptive force in the national market in the *AT&T/T-Mobile* proceeding). See also Youghioghny Communications Petition to Deny at Exhibit B.

¹⁹¹ See RWA Comments at 5.

¹⁹² See Public Knowledge Petition to Deny at 16-17 (contending that if AT&T is interested in the prepaid market, it has adequate resources to enter the market without eliminating a disruptive competitor).

¹⁹³ See Joint Opposition at 20.

¹⁹⁴ See *id.*

¹⁹⁵ See *id.* at 30 (citing Israel Declaration at ¶ 25, where he states, "[A] lower diversion ratio means that the firms in question are not particularly close competitors, thus limiting any competitive concerns.>").

¹⁹⁶ See Israel Declaration at ¶ 24.

¹⁹⁷ See Public Interest Statement at 25-29; Israel Declaration at ¶¶ 27-38; Hutcheson Declaration at 7-8; Jan. 3, 2014 AT&T Second Supplemental Response, Exhibit 4.1 at 6-7. The Applicants calculate T-Mobile's percent of Leap's ports out 2 years before T-Mobile's acquisition of MetroPCS and Leap's ports out after the T-Mobile/MetroPCS transaction. From 2 years prior to the T-Mobile/MetroPCS transaction to after the close of the transaction Leap's ports out to T-Mobile increased from [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] %. See Israel Reply Declaration at ¶¶ 24-38. The Applicants also argue that there are certain limitations with porting data such as: (1) porting data include only subscribers who keep their phone numbers when switching, meaning that the data capture only a subset of switchers; (2) porting data do not capture only those customers who switch due to changes in quality-adjusted prices, but rather include customers who switch for any reason. See Israel Declaration at ¶ 26. These calculations do not reflect porting at the local or national level but instead align with Leap's facilities-based service area. They reflect all local areas where (continued....)

from AT&T and Leap,¹⁹⁸ and conclude that consumers do not view AT&T and Leap as close substitutes.¹⁹⁹ They also argue that the rate of substitution calculated from the porting data compared with AT&T's and Leap's market shares indicates that competitive concerns from high market shares are not warranted.²⁰⁰ The Applicants claim that this limited substitution between AT&T and Leap is not surprising given the differentiated nature of their products.²⁰¹ The Applicants argue that the product offerings of Sprint's pre-paid brands, Boost and Virgin Mobile, and T-Mobile's MetroPCS brand are closer substitutes for Leap's offerings than AT&T's.²⁰² The Applicants further claim that in the markets where T-Mobile has introduced the MetroPCS brand there has been an increase in the number of ports out by Leap customers to T-Mobile's customers.²⁰³

56. The Applicants also argue that this transaction is unlikely to lead to significant upward pressure on post-transaction prices based on the results of a Gross Upward Pricing Pressure Index ("GUPPI") analysis submitted in response to the Information and Discovery Request.²⁰⁴ Their analysis estimates nationwide and Leap-service-area GUPPIs for the AT&T-Leap transaction,²⁰⁵ as well as CMA- (Continued from previous page) _____
AT&T has at least one port out to Leap and all of Leap's port out data for all geographies where Leap provides a facilities-based service. See Aug. 20, 2013 Applicants Supplemental Response at 7.

¹⁹⁸ See Israel Declaration at ¶ 26.

¹⁹⁹ See Israel Declaration ¶¶ 27-28; Hutchinson Declaration at 7. According to the Applicants' analysis of the data, only 13% of subscribers port from Leap to AT&T, and that only 3.3% of subscribers port from AT&T to Leap. See Israel Declaration at ¶ 27-28.

²⁰⁰ See Public Interest Statement at 26; Israel Declaration at ¶¶ 27-28; Joint Opposition at 30; see also Aug. 20, 2013 Applicants Supplemental Response at 6-8.

²⁰¹ See Public Interest Statement at 25; Israel Declaration at ¶¶ 27-31.

²⁰² See Public Interest Statement at 26-29; Israel Declaration at ¶¶ 32-38; Joint Opposition at 24-27; Israel Reply Declaration at ¶¶ 25-29. The Applicants also point to MVNOs such as TracFone/Straight Talk as being a closer substitute for Leap, although they do not have porting data to support this claim. See Public Interest Statement at 28-29, 28 n.134; Joint Opposition at 28-29. Leap anticipates increased head-to-head competition from T-Mobile's MetroPCS brand which has begun to expand aggressively into Leap's markets. See Hutchinson Declaration at 7; Joint Opposition at 24.

²⁰³ See Joint Opposition at 26; Israel Reply Declaration at ¶¶ 23-26; Jan. 3, 2014 AT&T Second Supplemental Response, Exhibit 4.1 at 8. Leap's ports out to T-Mobile since its introduction of the MetroPCS brand into Leap markets has increased from [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] %. See Joint Opposition at 26; Israel Reply Declaration at ¶¶ 26-27.

²⁰⁴ See Nov. 22, 2013 AT&T Initial Response at 12-14; Jan. 3, 2014 AT&T Second Supplemental Response at 1, Exhibit 4.1 at 2, 10-17. As described by AT&T, the GUPPI is an economic tool designed to analyze the unilateral incentives to raise price that may arise from a merger of two firms competing in a differentiated products industry, before considering the synergies and efficiencies arising from the transaction. See Nov. 22, 2013 AT&T Initial Response at 1.

²⁰⁵ See Nov. 22, 2013 AT&T Initial Response at 14; Jan. 3, 2014 AT&T Second Supplemental Response, Exhibit 4.1 at 2, 10-17. The average AT&T and Leap GUPPIs are less than [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] % across all CMAs and less than [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] % across all CMAs where Leap has an estimated market share of at least two percent. See Nov. 22, 2013 AT&T Initial Response at 14. Leap reduced its national distribution footprint from approximately 13,000 retail outlets in 2012 to approximately 5,000 retail outlets in 2013 in order to further reduce its costs. See Public Interest Statement, Hutcheson Declaration at ¶ 8.

level GUPPIs for seven south Texas CMAs and three Central Valley, California CMAs.²⁰⁶ The Applicants contend that their GUPPI analysis does not change the conclusion that the transaction would not lead to any upward price increases because pricing is national and competitive conditions in any particular CMA would have, at most, a limited effect on pricing in that CMA.²⁰⁷

57. Youghiogheny Communications contests the Applicants' claims that AT&T and Leap are not close competitors.²⁰⁸ Youghiogheny Communications argues that Leap competes with AT&T's pre-paid GoPhone and Aio Wireless service offerings, and with MVNOs that access the AT&T network.²⁰⁹ Further Youghiogheny Communications claims that competition between post- and pre- paid mobile wireless services is intensifying, and therefore consumers view these as substitute services.²¹⁰ Youghiogheny Communications also contests the Applicants' claims that the porting data confirm that AT&T and Leap are not close competitors, noting that the data on Leap's porting rates shows that Leap's customers are porting to the four nationwide providers, including AT&T, although the porting to AT&T is less than to Sprint or T-Mobile.²¹¹

58. *Effects on Value-Conscious Consumers.* Mr. Smith maintains that Leap serves a valuable function as a rival competitor and an important low cost alternative at the national and local level.²¹² Mr. Smith further contends that the proposed transaction undermines competition by removing one of the wireless market's chief regional carriers and providers of prepaid, no-contract wireless services.²¹³ Moreover, Public Knowledge contends that independent competitors, such as Leap, promote competition in the wireless market and avoid excessive spectrum aggregation.²¹⁴

59. CCA, Greenlining, and Youghiogheny Communications contend that, in addition to the loss of Leap as a competitor, the instant transaction would cause the elimination of Aio Wireless, thus

²⁰⁶ See Jan. 3, 2014 AT&T Second Supplemental Response, Exhibit 4.1 at 21-25. In the 10 selected CMAs, none of the weighted average GUPPIs is greater than [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] % and most are below [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] %. See Jan. 3, 2014 AT&T Second Supplemental Response, Exhibit 4.1 at 23. Leap states that its network operates primarily on 3G CDMA EVDO technology, and it is not providing 4G services on an MVNO basis. Leap maintains that, given its financial constraints and limited spectrum resources, it has limited its deployment of LTE to 11 metropolitan areas, covering approximately 21 million people. See Public Interest Statement, Hutcheson Declaration at ¶¶ 9, 13.

²⁰⁷ See Jan. 3, 2014 AT&T Second Supplemental Response, Exhibit 4.1 at 22. Given the results of their GUPPI analysis, Applicants did not construct or submit an economic model, such as a merger simulation model, that could take into account responses by other mobile wireless service providers, and may also incorporate efficiencies resulting from the transaction.

²⁰⁸ See Youghiogheny Communications Petition to Deny at 17-18; IAE Declaration at 14-15; IAE Reply Declaration at 5-7; IAE *Ex Parte*, Jan. 6, 2014 at 4-5, Appendix 1. Youghiogheny Communications argues that rather than finding AT&T and Leap to not be close competitors, the proper terminology should be "weak" competitor. See IAE Reply Declaration at 5-6.

²⁰⁹ See IAE Declaration at 14.

²¹⁰ See *id.* at 15; Youghiogheny Communications Reply at 7-8.

²¹¹ See IAE *Ex Parte* Jan. 6, 2014 at 4.

²¹² See Smith Petition to Deny at 4-5; Smith Reply at 7-8.

²¹³ See Smith Petition to Deny at 4-5.

²¹⁴ See Public Knowledge Petition to Deny at 8-9 (asserting that AT&T has been acquiring significant amounts of spectrum on the secondary market both through acquiring competitors and through purchasing licenses).

resulting in harm to competition. These petitioners assert that the Aio Wireless brand was intended to compete directly against Leap in the prepaid market and the proposed transaction would result in the elimination of Aio Wireless as an important competitive force that prompted AT&T to act to enter the prepaid market in the first place.²¹⁵ In particular, CCA claims that, while AT&T would still offer prepaid services, the proposed transaction would eliminate a competitor, and they claim that this would diminish innovation, eliminate options, and likely raise prices for consumers.²¹⁶

60. The Applicants maintain that even if the Commission examined a narrower prepaid or “value” segment, it should find that the proposed transaction does not threaten competition.²¹⁷ The Applicants contend that prepaid/no-contract service will continue to be provided by numerous providers offering a wide and growing variety of options for consumers.²¹⁸ The Applicants point to T-Mobile/MetroPCS and Sprint, and contend that these are significant competitors that each have a nationwide presence and offer more extensive, advanced 4G rollouts and service offers than Leap.²¹⁹ Moreover, the Applicants contend that MVNOs are significant providers of prepaid and value services.²²⁰

61. The Applicants argue that the proposed transaction is procompetitive given Leap’s declining significance and claims about the loss of potential competition from Aio Wireless are unfounded.²²¹ Concerning Aio Wireless, the Applicants assert that in combining Aio Wireless with Leap’s existing operations under the Cricket brand name,²²² AT&T would continue to build and expand its value offerings, and the proposed transaction would accelerate and strengthen the competitive effect of those offerings by allowing AT&T to integrate Leap’s assets and expand the Cricket brand nationwide.²²³

62. *Spectrum Aggregation.* CCA, RWA, and Mr. Smith claim that the marketplace is already dominated by AT&T and Verizon Wireless, due in large part to their dominant spectrum positions, and that the proposed transaction would only increase AT&T’s dominant position thereby making it more difficult for other providers to compete.²²⁴ CCA further asserts that with the majority of the available spectrum resources controlled by these two providers, it stymies the ability of other industry stakeholders to provide competitive services to consumers.²²⁵ CCA maintains that AT&T’s dominance in the wireless market through spectrum acquisitions could result in significant competitive advantages over smaller providers.²²⁶ Youghioghny Communications argues that there are concerns regarding industry

²¹⁵ See CCA Reply at 4-5; Greenlining Petition to Deny at 9-11; Youghioghny Communications Petition to Deny at 17.

²¹⁶ See CCA Petition to Condition at 4-7; CCA Reply at 4-5; Greenlining Petition to Deny at 8-9.

²¹⁷ See Joint Opposition at 24.

²¹⁸ See *id.*

²¹⁹ See *id.* at 24-28.

²²⁰ See *id.* at 28-29.

²²¹ See *id.* at 31.

²²² See Nov. 22, 2013 AT&T Initial Response at 43 (citing ATT-FCC-000032674 at 2).

²²³ See Joint Opposition at 31-32. See also Nov. 22, 2013 AT&T Initial Response at 50-51.

²²⁴ See CCA Petition to Condition at 2, 4, 7-12; CCA Reply at 7-9; RWA Comments at i., 2,4-5; RWA Reply at 1-2; Smith Petition to Deny at 1, 6-8; Smith Reply at 1, 3-4. See also Youghioghny Communications Jan. 29, 2014 *Ex Parte* at 2.

²²⁵ See CCA Petition to Condition at 7-8, 10. See also Youghioghny Communications Dec. 16, 2013 *Ex Parte* at 2.

²²⁶ See CCA Petition to Condition at 7-8; CCA Reply at 7-8; Smith Petition to Deny at 6.

consolidation and a resulting duopoly,²²⁷ and contends that the Commission should broaden its review to include the impact of all acquisitions in the wireless marketplace rather than in isolation because a narrow focus blinds the Commission to the incremental effects of previous cases.²²⁸ RWA argues that competitive harm would result from spectrum concentration in any market with fewer than four providers and occurs regardless of whether those providers are nationwide providers.²²⁹ Public Knowledge argues that the proposed transaction will increase AT&T's spectrum holdings in some particular markets.²³⁰

63. The Applicants contend that the post-transaction spectrum aggregation does not result in competitive concerns, and the Commission's current spectrum screen "confirms the absence of competitive harm."²³¹ The Applicants contend that, concerning the potential competitive effects on the national level, the instant transaction would affect less than two percent of the spectrum available and suitable nationwide for mobile services, and in every market involved in this transaction, the four national carriers already hold spectrum, and there are other spectrum holders that can deploy their spectrum or make it available for use by other providers.²³² The Applicants refer to Dr. Israel's Declaration, which concludes that there should not be concern here, where spectrum "is dispersed across other national carriers, additional licensees have unused spectrum, and a substantial additional amount of spectrum is about to be licensed."²³³

64. *Interoperability.* In addition, Youghioghny Communications and James Jones raise interoperability-related concerns. Youghioghny Communications contends that approval of the proposed transaction should be conditioned on AT&T offering interoperable devices.²³⁴ Mr. Jones argues that the Chicago License should be used for "real world" interoperability testing.²³⁵

65. With respect to interoperability concerns, the Applicants argue that the interoperability issue is being resolved in the separate proceeding and that any harms relating to interoperability are not specific to the proposed transaction, particularly since AT&T is not acquiring any 700 MHz spectrum from Leap (other than the transaction relating to the Chicago License).²³⁶

(ii) Discussion

66. *Discussion.* We are not persuaded by certain general arguments raised by petitioners, for

²²⁷ See Youghioghny Communications Jan. 29, 2014 *Ex Parte* at 2; Youghioghny Communications Dec. 16, 2013 *Ex Parte* at 1-2.

²²⁸ See Youghioghny Communications Reply at 3-4. See also Youghioghny Communications Dec. 16, 2013 *Ex Parte* at 1-2.

²²⁹ See RWA Comments at 2-3, 5.

²³⁰ See Public Knowledge Petition to Deny at 5-6, Appendix. A - Revised Spectrum Aggregation Chart at 35, Appendix. B - Competitors Chart at 265-266 (arguing that AT&T will control more than half of all available PCS spectrum in some markets).

²³¹ See Joint Opposition at 12. See also Joint Opposition at 13-17.

²³² See Public Interest Statement at iv, 32-34; Joint Opposition at 10-11. The Applicants also assert that substantial additional spectrum is planned to be available for mobile services in the near-term, including through the PCS H Block and broadcast incentive auctions. See Joint Opposition at 12.

²³³ See Joint Opposition at 14 (citing Israel Declaration at ¶ 45 and Israel Reply Declaration at ¶¶ 49-53).

²³⁴ See Youghioghny Communications Petition to Deny at 24-25.

²³⁵ Jones Comments at 2.

²³⁶ See Joint Opposition at 43.

instance that the loss of Leap is likely to have significant nationwide competitive effects. Leap offers facilities-based services in markets covering approximately one-third of the population of the United States, as well as MVNO services beyond its network footprint, but its nationwide significance has been declining. Leap generally has a modest market presence today, and with only a handful of exceptions, each of the four nationwide service providers will continue to compete in the markets where Leap operates, and in some markets, there is additional competition from regional providers.²³⁷ We do find, however, that there is some potential for competitive harm in certain local markets, and that Leap has been providing a meaningful alternative for value-conscious consumers through its facilities-based prepaid service offerings.

67. *Loss of a Maverick Competitor.* When evaluating the competitive effects of a transaction, we consider whether a firm has acted as a “disruptive force,” or “maverick,” providing more of a competitive constraint in the market than would otherwise be expected of a firm of its size.²³⁸ In general, the elimination of a firm that acts as a disruptive force in a highly concentrated market raises the likelihood of anticompetitive conduct that might have been constrained before the proposed transaction.²³⁹ Based on our evaluation of the record, we find that Leap has not recently been a maverick or a disruptive force at the national or local level.

68. When Leap initially entered the wireless market, it was among the first to offer both prepaid plans and unlimited calling plans. Contrary to petitioners’ arguments, however, our evaluation of the entire record does not support the proposition that Leap’s actions since then have been disruptive. Certain petitioners point to Leap’s introduction of the Muve music service, which Leap bundled with some of its plans, as evidence of this type of disruptive behavior.²⁴⁰ However, there is no support in the record that Leap’s actions had a significant effect on the industry, and the other providers who once offered similar services have since ceased doing so. AT&T recently introduced its own streaming music service, which it offers for an additional fee. But not only did AT&T’s action occur after it agreed to purchase Leap, it occurred well after Leap’s introduction of the Muve music service.²⁴¹ Disruptive behavior usually has a stronger and more immediate effect. For example, on July 10, 2013, T-Mobile announced a ground-breaking new offer, “Jump!^(TM),” which allows T-Mobile subscribers to “upgrade their phones when they want, up to twice a year as soon as six months from enrollment.”²⁴² In response, on July 16, 2013, AT&T announced “AT&T Next,” a program providing AT&T subscribers with a new

²³⁷ See Public Interest Statement at 32-33.

²³⁸ See 2010 DOJ/FTC Horizontal Merger Guidelines, at § 2.1.5 at 3; § 7.1 at 25.

²³⁹ See *United States v. H&R Block, Inc.*, No. 11-00948, slip op. at 63 (D.D.C. Nov. 10, 2011) (citing *FTC v. Staples, Inc.*, 970 F. Supp. 1066, 1083 (D.D.C. 1997)); *DOJ/FTC Horizontal Merger Guidelines* §§ 2.1.5, 7.1; see also ABA Section of Antitrust Law, *Antitrust Law Developments* (6th ed. 2007) at 356 (*Antitrust Law Developments* (Sixth)) (citing 1992 *Horizontal Merger Commentary* at 24).

²⁴⁰ See, e.g., Smith Petition to Deny at 8; Smith Reply at 7. Further, without more, we do not credit either AT&T’s or Leap’s then statements that Leap, or companies “like” Leap, has been a maverick or a leading industry innovator.

²⁴¹ We also note that in February 2013 Leap stated that it intended to spin-off the Muve music service as a separate company with the hope that other wireless companies would offer the service to their customers, which Leap believed they might have been unwilling to do while it was a “Leap” product. See Youghioghny Communications Petition to Deny at Exhibit B.

²⁴² See T-Mobile Announces Boldest Moves Yet as America's Un-carrier, <http://newsroom.t-mobile.com/phoenix.zhtml?c=251624&p=irol-newsarticle&ID=1836669> (last visited Mar. 12, 2014).

smartphone or tablet every year,²⁴³ and, on July 18, 2013, Verizon Wireless announced its own early update plan, allowing its subscribers to upgrade their devices after six months if 50 percent of the purchase price has been paid.²⁴⁴

69. The petitioners point to no other examples of allegedly disruptive behavior by Leap. We disagree that evidence of a provider striving to compete in the market, for instance,²⁴⁵ or responding to price changes,²⁴⁶ indicates that a provider is a maverick. In conclusion, we have not found support in the record for the petitioners' assertions that Leap has been a competitor that has recently operated as a maverick or been a disruptive force in the market.

70. *Upward Pricing Pressure.* In response to competitive concerns regarding whether the loss of Leap would materially affect the pricing or other key competitive decisions of the nationwide wireless providers, we find that, although AT&T and Leap are not each other's closest substitutes over Leap's entire facilities-based service area,²⁴⁷ Leap has provided meaningful choices for certain consumers, particularly in specific local markets. For instance, the porting rate between AT&T and Leap, in certain geographic markets, is much higher than the average porting rate between AT&T and Leap calculated over all markets where Leap has a facilities-based presence. For example, in Pine Bluff, AR (CMA 291) approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent of Leap's customers port to AT&T and in Laredo, TX (CMA 281) approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent of AT&T's customers port to Leap.²⁴⁸ Therefore given certain local market characteristics, AT&T and Leap are much closer substitutes in some markets than they are when aggregated throughout Leap's facilities-based service areas. However, porting data alone is not dispositive of potential competitive harms that may arise from a particular transaction in either local or national markets and any conclusion on the likelihood of competitive harms for any relevant market requires consideration of other factors.²⁴⁹

²⁴³ See AT&T Customers Can Get a New Smartphone or Tablet Every Year With No Down Payment With "AT&T Next," <http://www.att.com/gen/press-room?pid=24538&cdvn=news&newsarticleid=36749&mapcode=> (last visited Mar. 12, 2014).

²⁴⁴ See Verizon gives handset upgrades every 6 months with new Edge program, <http://www.fiercewireless.com/story/verizon-gives-handset-upgrades-every-6-months-new-edge-program/2013-07-18> (last visited Mar. 12, 2014).

²⁴⁵ See CCA Petition to Condition at 5-6; Smith Reply at 7-8; see also Youghioghny Communications Petition to Deny at 17-18; Youghioghny Reply at 7-9.

²⁴⁶ See Youghioghny Communications Petition to Deny at 16.

²⁴⁷ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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²⁴⁸ 2013 LNP Data. According to the Applicants' data, in Laredo approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent of AT&T's customers port to Leap and approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent of AT&T's prepaid ports go to Leap. See Nov. 22, 2013 AT&T Initial Response Exhibit 25_3_a-c.

²⁴⁹ See AT&T-Qualcomm Order at 17598-99 ¶ 23; Sprint-Nextel Order at 14004-05 ¶ 102.

71. We are not persuaded that the Applicants' GUPPI analysis demonstrates that this transaction presents no, or little, potential competitive harm in terms of upward pricing pressure. As set out in the *2010 DOJ/FTC Horizontal Merger Guidelines*, a GUPPI analysis is one method of assessing the likelihood of upward pricing pressure that may result from a transaction.²⁵⁰ Generally, adverse upward pricing pressure is considered unlikely if the GUPPI is less than five percent.²⁵¹ The GUPPIs calculated by the Applicants are below five percent for the entire Leap service area, although they are higher than five percent in select markets.²⁵² We note, however, the choice of assumptions may significantly affect the GUPPI results. For example, one key assumption here is the recapture rate used to calculate the diversion ratio.²⁵³ For customers leaving Leap, the Applicants **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** percent recapture rate, which is the share of customers leaving a wireless provider due to a price increase that switch to another provider within some reasonable period of time.²⁵⁴ If a higher recapture rate had been assumed, then the GUPPIs would have increased, potentially well above five percent.²⁵⁵ In addition, while GUPPI analysis may provide evidence of the likelihood of upward pricing pressure, it is not dispositive of the presence or absence of competitive harms.

72. *Effects on Value-Conscious Consumers.* We find that the market for mobile telephony/broadband services in the United States is differentiated. Service providers compete not only on the basis of price but also on other variables such as plan features, call quality, geographic coverage, and customer service. The record indicates that although Leap's nationwide importance has been declining, it serves a valuable function as a low-cost alternative in its footprint and specifically with respect to the narrower prepaid or "value" segment of the marketplace. In evaluating the potential competitive harm in this segment, we analyzed the role of Leap in competing against AT&T and other providers for customers in this market segment, including a review of Leap's device offerings and pricing plans as well as consumer preferences for qualities and services for prepaid products. In addition, we evaluated AT&T's pre-merger prepaid offerings on GoPhone and Aio Wireless, and how AT&T positioned these products both in its product portfolio and in the prepaid space. We also took into account the effect of this merger on market structure and the extent to which choices are eliminated and consumer welfare harmed. As a result, we have concerns about loss of Leap as a competitor in its footprint and with respect to the narrower prepaid or "value" segment of the marketplace, and we find that the potential for competitive harm is more likely in that segment. With respect to concerns generally at the national level, the record indicates that Leap's business model has been focused on providing

²⁵⁰ See *2010 DOJ/FTC Horizontal Merger Guidelines*, at § 6.1, p. 21.

²⁵¹ See Carl Shapiro remarks as prepared for the American Bar Association Section of Antitrust Law Fall Forum, at 24 (Nov. 18, 2010), available at <http://www.justice.gov/atr/public/speeches/264295.pdf> (last visited Mar. 12, 2014).

²⁵² See Jan. 3, 2014 AT&T Second Supplemental Response, Exhibit 4.1 at 10-17, 23. Specifically, the Applicants calculate GUPPIs of between **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**.

²⁵³ The diversion ratio is a measure of buyer substitution that is closely related to the cross price elasticity. See Applications of AT&T Inc. And Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, *Staff Analysis and Findings*, 26 FCC Rcd 16184, 16320, Appendix C ¶ 9 (WTB 2011); Gregory J. Werden, 1996, "A Robust Test for Consumer Welfare Enhancing Mergers Among Sellers of Differentiated Products." *The Journal of Industrial Economics*, 44(4), p. 410; CRA Competition Memo, 2010, <http://www.crai.com/uploadedFiles/Publications/Commentary-on-the-GUPPI.pdf> (last visited Mar. 12, 2014).

²⁵⁴ See Jan. 3, 2014 AT&T Second Supplemental Response, Exhibit 4.1, at 28.

²⁵⁵ See Jan. 3, 2014 AT&T Second Supplemental Response, Exhibit 4.1 in Response to Request 4, at 28. Changes in the recapture rate were not part of any sensitivity testing submitted by the Applicants to the Commission.

facilities-based wireless service in only selected metropolitan areas, and it provides nationwide coverage through other arrangements.²⁵⁶

73. *Spectrum Aggregation.* We address spectrum aggregation issues for specific markets subject to this transaction in our market-by-market analysis below. All other general spectrum aggregation concerns are not specific to this transaction.²⁵⁷ As noted above, the Commission is reviewing its general spectrum holding policies and related competitive issues, in the ongoing mobile spectrum holdings rulemaking proceeding.²⁵⁸

74. *Interoperability.* We also decline to impose the interoperability conditions requested by Youghioghny Communications or to mandate the use of the Chicago License requested by Jones. The proposed interoperability conditions are not narrowly tailored to remedy any purported harms arising out of this transaction.²⁵⁹ The Commission recently took action to implement an industry solution to provide interoperable LTE service in the Lower 700 MHz band in an efficient and effective manner to improve choice and quality for consumers of mobile services.²⁶⁰

b. Market-by-Market Analysis

75. In our market-by-market analysis set out below, we examine the likelihood of competitive harm by assessing the potential competitive effects of any significant increases in market and spectrum concentration on the marketplace. In undertaking our market-by-market analysis,²⁶¹ we consider various competitive variables that help to predict the likelihood of competitive harm post-transaction. These competitive variables include, but are not limited to: the total number of rival service

²⁵⁶ See Public Interest Statement, Hutcheson Declaration at ¶ 3. According to Leap, it approached a significant number of other potential strategic acquirers and wireless providers throughout the past several years regarding business combination transactions, conversion to an MVNO model combined with an asset or spectrum sale, network sharing transactions, the sale of under-performing markets and the sale of all or substantially all of Leap's spectrum. Leap concluded that none of these approaches resulted in a meaningful interest by or negotiations with such potential acquirers. See Leap Wireless International, LLC, SEC Schedule 14A, at 36 (filed Sep. 17, 2013), available at <http://www.sec.gov/Archives/edgar/data/1065049/000119312513368430/d575780ddefm14a.htm> (last visited Mar. 11, 2014). See also Public Interest Statement, Hutcheson Declaration at ¶¶ 12-13.

²⁵⁷ Concerning Public Knowledge's claim that post transaction AT&T will hold more than half of the PCS spectrum, we note that our analysis (and Applicants') records indicate that post transaction, AT&T will not hold that amount of the PCS spectrum in any market identified by Public Knowledge.

²⁵⁸ See *Mobile Spectrum Holdings NPRM*, 27 FCC Rcd at 11725-28 ¶¶ 33-39.

²⁵⁹ See *AT&T-ATN Order*, 28 FCC Rcd at 13704 ¶¶ 62-63 (rejecting request to place interoperability conditions on AT&T because alleged harms were not transaction-specific).

²⁶⁰ See *Promoting Interoperability in the 700 MHz Commercial Spectrum, Requests for Waiver and Extension of Lower 700 MHz Band Interim Construction Benchmark Deadlines*, WT Docket Nos. 12-69, 12-332, *Report and Order and Order of Proposed Modification*, 28 FCC Rcd 15122 (2013). See also *Promoting Interoperability in the 700 MHz Commercial Spectrum, WT Docket No. 12-69, Order of Modification*, 29 FCC Rcd 281 (WTB 2014) (modifying AT&T's Lower 700 MHz B and C Block licenses consistent with the *Report and Order and Order of Proposed Modification*).

²⁶¹ We derive market shares and HHIs from our analysis of data compiled in our 2013 NRUF and LNP database. We derive network coverage from Mosaik January 2014 data and 2010 U.S. Census data, and we obtain spectrum holdings from our licensing databases and the Applications. In addition, we examine porting data from our 2013 LNP database, as well as from data submitted by the Applicants, which includes each instance of a customer porting a phone number from one mobile provider to another, and indicates both the origin and destination provider. We also utilized and analyzed the additional data as provided by the Applicants through our information requests.

providers; the number of rival firms that can offer competitive nationwide service plans; the coverage by technology of the firms' respective networks; the rival firms' market shares; the combined entity's post-transaction market share and how that share changes as a result of the transaction; the amount of spectrum suitable for the provision of mobile telephony/broadband services controlled by the combined entity; and the spectrum holdings of each of the rival service providers. Further, in the instant transaction, AT&T is acquiring AWS-1 spectrum in the majority of the CMAs, and consistent with Commission precedent, we also consider the potential competitive effect of the proposed transaction on those local markets where AT&T would hold a substantial amount of AWS-1 spectrum post-transaction.²⁶²

76. Concerning the markets that were identified by the initial HHI and the spectrum screens and other spectrum and competitive concerns, after careful evaluation of the competitive effects in each market, we find that the potential for competitive harm is unlikely in the majority of these markets. For the markets identified below, however, we undertake a further market-by market review to examine the competitive landscape and evaluate whether competitive harm is likely in any of these local markets.

(i) San Diego and the California Central Valley

77. *Record.* Greenlining asserts that it is concerned about the effect of the proposed transaction on competition in local markets where the Cricket band has a strong presence, particularly in San Diego and California's Central Valley because the markets are home to large minority populations.²⁶³

78. The Applicants claim that Greenlining does not provide an explanation or supporting evidence for their competitive concerns.²⁶⁴ The Applicants contend that there will be no adverse local impact in California because four national carriers will continue to compete vigorously in those markets with sufficient spectrum to expand service.²⁶⁵ The Applicants argue that Sprint has a significant share of subscribers in the markets at issue, and T-Mobile's estimated share is approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]** percent or greater in San Diego, CA (CMA 18), Fresno, CA (CMA 74), Modesto, CA (CMA 142), and California 4 – Madera (CMA 339).²⁶⁶ The Applicants assert that T-Mobile has also introduced MetroPCS service in San Diego and Fresno, thus intensifying competition in value-conscious offerings.²⁶⁷ Further, according to the Applicants, MetroPCS has a strong presence in Modesto, has added at least 40 retail locations in the Central Valley, and has almost 100 retail locations in the San Diego market, an area it did not previously serve.²⁶⁸

79. AT&T states that it agreed to commitments with the California Public Utilities Commission that, for a period of 18 months after closing, Cricket will offer a \$40 per month (including all taxes and fees) feature phone prepaid plan featuring unlimited talk, text, and data and no roaming

²⁶² See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd 10698.

²⁶³ See Greenlining Petition to Deny at 8-9 (noting concern in the California counties of San Joaquin, Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern within the Central Valley). These counties are encompassed by the following CMAs: Fresno, CA (CMA 74); Bakersfield, CA (CMA 97); Stockton, CA (CMA 107); Modesto, CA (CMA 142); Visalia-Tulare-Porterville, CA (CMA 150); California 4 – Madera (CMA 339); and California 12 – Kings (CMA 347). We note that no assets are being assigned as part of this transaction in Bakersfield or Stockton.

²⁶⁴ See Joint Opposition at 38.

²⁶⁵ See *id.* at ii, 38.

²⁶⁶ See *id.* at 38.

²⁶⁷ See *id.*

²⁶⁸ See *id.*

charges to new and existing customers in California.²⁶⁹ Further, AT&T states that it intends to offer the same \$40 per month prepaid plan wherever the Cricket brand is available nationwide during the same 18-month period.²⁷⁰ In response, Greenlining states that, based on AT&T and Leap's assurances both in the documents submitted to the California Public Utilities Commission and as a result of discussions between the Parties, Greenlining is satisfied that the Applicants' commitments will help mitigate the proposed transaction's potential public interest harms.²⁷¹

80. *Discussion.* We here conduct our market-specific review of six CMAs in California that are triggered by the initial screen. Four of these CMAs – San Diego, Fresno, Modesto, and California 12 – Kings (CMA 347) – are non-rural markets with populations ranging from 153,000 to 3.1 million and with population densities of 110 to 736 people per square mile. The other two CMAs – Visalia-Tulare-Porterville, CA (CMA 150) and California 4 – are rural markets with populations of approximately 442,000 and 462,000, respectively, and population densities of 92 and 85 people per square mile. All six CMAs trigger the HHI screen,²⁷² and Modesto and California 4 trigger the spectrum screen as well.²⁷³

81. Post-transaction, AT&T would hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** percent in these six California markets.²⁷⁴ With the exceptions of San Diego and Modesto, Leap currently holds a significant market share in these CMAs.²⁷⁵ In all of the CMAs except for Visalia-Tulare-Porterville, the other three nationwide providers have significant market share.²⁷⁶ In these six markets, the share of

²⁶⁹ See Joint Opposition at 6-7 (citing Letter from J. David Tate, General Attorney & Associate General Counsel, AT&T, to Ryan Dulin, Director, Communications Division, California Public Utilities Commission, re Notice by AT&T Inc. of Proposed Indirect Transfer of Control of Cricket Communications, Inc. (U-3076- C) at 6 (Oct. 8, 2013)).

²⁷⁰ See Joint Opposition at 7.

²⁷¹ See Letter from Orson Aguilar, Executive Director, Greenlining Institute to Marlene H. Dortch, Secretary Federal Communications Commission, WT Docket 13-193 (filed Nov. 4, 2013).

²⁷² The post-transaction HHI would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** in San Diego, Fresno, Visalia-Tulare-Porterville, and California 12, respectively and the change in the HHI would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** in these respective CMAs.

²⁷³ The post-transaction HHI would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** in Modesto and California 4, respectively and the change in the HHI would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** in these respective CMAs. Post-transaction, AT&T would hold 156 megahertz of spectrum in Modesto and 151-166 megahertz of spectrum in California 4.

²⁷⁴ Post-transaction, AT&T would hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, in San Diego, Fresno, Modesto, Visalia-Tulare-Porterville, California 4, and California 12, respectively.

²⁷⁵ Leap holds **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** percent in San Diego, Fresno, Modesto, Visalia-Tulare-Porterville, California 4, and California 12, respectively.

²⁷⁶ In San Diego, CA, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively. In Fresno, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively. In Modesto, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** (continued....)

AT&T's customers porting to Leap generally tracks the average percentage of ports calculated by the Applicants.²⁷⁷ However, the share of Leap's customers porting to AT&T in several of these markets is substantially higher than the average calculated by the Applicants.²⁷⁸ In terms of population coverage, the transaction would result in a decrease from five to four providers with significant 3G coverage.²⁷⁹ In terms of land area coverage, the number of providers with significant 3G land area coverage falls from four to three in Modesto and from three to two in Fresno and California 12.²⁸⁰ There is no change in San Diego, Visalia-Tulare-Porterville, and California 4 because Leap does not have significant land area 3G coverage in those CMAs.²⁸¹ Because Leap has not deployed an LTE network in any of these markets, there is no change in the number of providers with significant LTE population or land area coverage.²⁸²

82. In San Diego, Fresno, Visalia-Tulare-Porterville, and California 12, AT&T would hold 140 to 148 megahertz of spectrum. Further in these CMAs, the other significant providers hold between 40 and 114 megahertz of spectrum.²⁸³ In Modesto and California 4, AT&T would hold 156 megahertz

(Continued from previous page) _____

INFORMATION] **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively.
 In Visalia-Tulare-Porterville, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively.
 In California 4, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively.
 In California 12, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively.

²⁷⁷ In these six CMAs **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of AT&T's customers port to Leap. See 2013 LNP Data.

²⁷⁸ In these six CMAs **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of subscribers port from Leap to AT&T. See 2013 LNP Data.

²⁷⁹ The Commission has previously found coverage of 70% or more of the population and 50% or more of the land area as presumptively sufficient for a provider to have a competitive presence in the market. See *AT&T-ATN Order*, 28 FCC Rcd at 13704 ¶ 43; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2339 ¶ 50 n.119; *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8733 ¶ 65. In San Diego, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile all cover more than 94% of the population. In Fresno, Modesto, and Visalia-Tulare-Porterville, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile all cover more than 85% of the population. In California 4 and California 12, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile all cover more than 75% of the population.

²⁸⁰ In Fresno, AT&T, Leap, and Verizon Wireless have significant 3G land area coverage of 66%, 51%, and 72%, respectively. In Modesto, AT&T, Leap, Verizon Wireless, and T-Mobile have significant 3G land area coverage of 72%, 63%, 83%, and 61%, respectively. In California 12, AT&T, Leap, and Verizon Wireless have significant 3G land area coverage of approximately 99%, 85%, and 100%, respectively.

²⁸¹ In Visalia-Tulare-Porterville, AT&T and Verizon Wireless have significant 3G land area coverage of 50% and 64%, respectively. In California 4, AT&T and Verizon Wireless have significant 3G land area coverage of 69% and 83%, respectively. In San Diego, AT&T, Verizon Wireless, and T-Mobile all have significant 3G land area coverage of 83%, 82%, and 58%, respectively.

²⁸² In San Diego, AT&T, Verizon Wireless, Sprint, and T-Mobile have deployed LTE networks covering 97%, 99%, 96%, and 96% of the population, respectively, and 45%, 72%, 32%, and 41% of the land area, respectively. In Fresno, Modesto, Visalia-Tulare-Porterville, and California 4, AT&T, Verizon Wireless, and T-Mobile have deployed LTE networks covering 76 to 100%, 99 to 100%, 58 to 99%, and 74 to 99% of the population, respectively, and 16 to 64%, 65 to 83%, 19 to 51%, and 45 to 76% of the land area, respectively. In California 12, AT&T and Verizon Wireless have deployed LTE networks covering approximately 74% and 100% of the population, respectively, and approximately 75% and 100% of the land area, respectively.

²⁸³ In San Diego, Fresno, Visalia-Tulare-Porterville, and California 12, Verizon Wireless holds 97 to 114 megahertz, Sprint holds 98.5 to 114 megahertz, and T-Mobile holds 40 to 65 megahertz of spectrum.

and 151 to 166 megahertz, respectively. In these two markets, the other significant providers hold between 40 and 109 megahertz of spectrum.²⁸⁴

83. Based on our analysis of the market-specific factors of these six CMAs, we find, first, that the potential for competitive harms in San Diego is unlikely because Leap is neither a significant provider nor does it cover a significant portion of the land area of the CMA. We also find there is not likely to be any substantial competitive harms in the Fresno, Modesto, California 4, and California 12 markets as a result of market concentration. Although Leap is a significant provider in three of these four markets, in all four CMAs post-transaction, there would be three additional providers besides the merged entity with significant market share and significant 3G population coverage, and one or two additional providers with significant LTE population coverage. In Visalia-Tulare-Porterville, the sixth CMA, we find on balance only a limited likelihood for competitive harms as a result of market concentration. Although the likelihood of competitive harms is greater than in the other markets because AT&T's post-transaction market share is greater and there are only two other providers with significant market share, we note that three additional providers will remain that cover a significant portion of the CMA population with 3G and two other providers have deployed LTE networks. Finally, after reviewing the two CMAs triggered by the spectrum screen, we conclude that spectrum divestitures here are not necessary to address the potential that AT&T's post-transaction spectrum aggregation would raise rivals' costs in Modesto or California 4.²⁸⁵

(ii) South Texas Markets

84. Youghioghny Communications claims that AT&T's acquisition of Leap in certain south Texas markets would harm competition and consumers in these markets.²⁸⁶ Youghioghny Communications argues that in south Texas, post-transaction, AT&T would exceed the spectrum screen in certain markets.²⁸⁷ Public Knowledge contends that post-transaction AT&T would hold 50 megahertz or 56 percent of AWS-1 spectrum in McAllen, Edinburg-Mission, TX (CMA 128).²⁸⁸ Further, Youghioghny Communications claims that Leap has a large market share in many of the south Texas CMAs²⁸⁹ and that the HHI screen is triggered in 11 out of 12 of the markets in and proximate to south

²⁸⁴ In Modesto, Verizon Wireless, Sprint, and T-Mobile hold 89, 103.85, and 75 megahertz of spectrum, respectively and in California 4, they hold 89 to 109, 103.85 to 104, and 40 to 80 megahertz of spectrum, respectively. In both of these CMAs, the only paired spectrum remaining is 10 megahertz held by Aloha. An application has been filed assigning this spectrum from Aloha to AT&T. See ULS File No. 0006065982.

²⁸⁵ We note, however, that AT&T currently has on file another application in which it is proposing to acquire additional spectrum in five of the CMAs analyzed above (the exception being San Diego). See ULS File No. 0006065982.

²⁸⁶ See Youghioghny Communications Petition to Deny at 15-17; IAE Declaration at 22; IAE Feb. 28, 2014 *Ex Parte* at 4.

²⁸⁷ See Youghioghny Communications Petition to Deny at 6.

²⁸⁸ See Public Knowledge Petition to Deny at 6.

²⁸⁹ See Youghioghny Communications Petition to Deny at 15. These markets include San Antonio, TX (CMA 33), Corpus Christi, TX (CMA 112), McAllen-Edinburg-Mission, TX (CMA 128), Brownsville-Harlingen, TX (CMA 162), and Laredo, TX (CMA 281), with Leap's market shares ranging from approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent in San Antonio to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent in Laredo.

Texas.²⁹⁰ Youghioghny Communications contends that the transaction would create a classic duopoly in south Texas between AT&T and Sprint,²⁹¹ and a duopoly of AT&T and Verizon Wireless in the provision of LTE services as a result of their substantial below 1 GHz spectrum holdings.²⁹² Other providers in these markets face barriers to entry because only AT&T and Verizon Wireless hold significant amounts of below 1 GHz spectrum.²⁹³ Youghioghny Communications asserts that in the past, direct head-to-head competition in the south Texas markets resulted in lower prices for prepaid mobile services, as well as a more extensive network coverage area by Leap.²⁹⁴

85. The Applicants claim that there is no harm from spectrum aggregation in the south Texas markets based on total amount of spectrum held by the nationwide providers, other spectrum held by other licensees, and that the Commission will be auctioning the PCS H Block and 600 MHz spectrum in the coming year.²⁹⁵ The Applicants argue that all four nationwide providers offer service in south Texas and competition will continue to be vibrant post-transaction.²⁹⁶ In particular, the Applicants argue that Sprint is a strong competitor based on its market share.²⁹⁷ In addition, the Applicants contend that Leap's

²⁹⁰ See Youghioghny Communications Petition to Deny at 15, 26-27; IAE Declaration at 19, Appendix B; Youghioghny Communications Reply at 2-3. The markets included in Youghioghny Communications' analysis are 11 Texas CMAs: San Antonio, Corpus Christi, McAllen-Edinburg-Mission, Brownsville-Harlingen, Galveston-Texas City, TX (CMA 170), Laredo, Victoria, TX (CMA 300), Texas 15 – Concho (CMA 666), Texas 18 – Edwards (CMA 669), Texas 19 – Atascosa (CMA 670), and Texas 20 – Wilson (CMA 671) as well as Lake Charles, LA (CMA 197). Further, the petitioner claims that Leap is the dominant pre-paid provider in south Texas. See Youghioghny Communications Petition to Deny at 15.

²⁹¹ See Youghioghny Communications Petition to Deny at 26; IAE Declaration at 21, Exhibit B; Youghioghny Communications Reply at 3, 10-11. Youghioghny Communications claims that AT&T's and Sprint's combined market shares would be as high as **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** percent of the market. See Youghioghny Communications Petition to Deny at 26.

²⁹² See IAE Declaration at 21

²⁹³ See IAE Declaration at 20.

²⁹⁴ See Youghioghny Communications Petition to Deny at 16. This competition was between Leap and Pocket Communications, LLC ("Pocket"), prior to Leap and Pocket, Punxsutawney Communications, LLC, Elitel, Inc. and certain of their affiliates forming a joint venture in 2010. See ULS file nos. 00041469410 and 00041694237. Leap holds an approximate 75.75% interest in the joint venture and Paul Posner holds approximately 24.25 % in the joint venture and holds a 100% interest in Youghioghny Communications, LLC. See Form 602, STX Wireless, filed May 16, 2012.

²⁹⁵ See Joint Opposition at 15-17. The Applicants specifically analyze Corpus Christi, TX (CMA 112), McAllen-Edinburg-Mission, TX (CMA 128), and Brownsville-Harlingen, TX (CMA 162). See Joint Opposition at 15-16, n.53. The Applicants claim that this analysis would apply to a broader definition of south Texas that would include 11 Texas CMAs. See Joint Opposition at 37, n.136 (citing IAE Declaration at 31-32, Appendix B; Israel Reply Declaration at ¶ 61 n. 100).

²⁹⁶ See Joint Opposition at 33-34; Israel Reply Declaration at 35. According to the Applicants, the market shares of the four nationwide competitors in the south Texas CMAs are never smaller than **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** percent in any of the five South Texas CMAs. See Israel Reply Declaration at 35 n.101.

²⁹⁷ See Joint Opposition at 34-35; Israel Reply Declaration at 35. Sprint has approximately a **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** percent market share in the south Texas region. See Joint Opposition at 34; Israel Reply Declaration at 35.

market share has declined significantly in the south Texas CMAs,²⁹⁸ and this decline implies that it would be an even less effective competitor as a standalone company in the future than it is today.²⁹⁹ Further, the Applicants argue that T-Mobile has launched the MetroPCS brand in south Texas and is targeting Leap customers and will compete aggressively against AT&T post-transaction.³⁰⁰

86. Youghioghny Communications argues that the Applicants' analysis of the south Texas markets is misleading because they point to Sprint as a strong competitor and Leap as a competitor in decline, whereas the data shows that there was an equal or greater decline in Sprint's market share for the same time period.³⁰¹

87. *Discussion.* As a result of our case-by-case analysis of the south Texas markets, including those markets discussed in the Youghioghny Communications petition,³⁰² we conclude that the instant transaction would likely result in competitive harm in certain markets in Texas. We analyze the twelve Texas CMAs in three groups. In four CMAs we conclude that there is the potential of harm from the loss of a strong facilities-based provider.³⁰³ In an additional four CMAs we conclude that AT&T's post-transaction spectrum aggregation would result in an increased likelihood of foreclosure or of raising rivals' costs.³⁰⁴ In the remaining four markets, we find that competitive harm is unlikely.³⁰⁵ The following analyzes the market-specific facts leading to these conclusions.

88. The first four CMAs, Laredo, TX (CMA 281), Texas 18 – Edwards (CMA 669), Texas 19 – Atascosa (CMA 670), and Texas 20 – Wilson (CMA 671), raise the most significant concerns. They are rural markets with populations ranging from approximately 169,000 to 252,000, and population densities ranging from 14 to 74 people per square mile.³⁰⁶ These four CMAs are located in South Texas and are contiguous. All four markets were identified by both the HHI screen³⁰⁷ and the spectrum

²⁹⁸ According to the Applicants, between March 31, 2012 and June 30, 2012, Leap lost approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] of its subscribers in the five south Texas CMAs and [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] of its subscribers in the 11 Texas CMAs listed in Information Age Economics' Appendix B. *See* IAE Declaration at Exhibit B.

²⁹⁹ *See* Israel Reply Declaration at 36.

³⁰⁰ *See* Joint Opposition at 35-36; Israel Reply Declaration at 36. According to the Applicants, there is a notable increase in Leap's port outs to T-Mobile/MetroPCS in south Texas since MetroPCS's launch. *See* Joint Opposition at 36; Israel Reply Declaration at 36, Figure 2.

³⁰¹ *See* Youghioghny Communications Reply at 9-10.

³⁰² *See* Youghioghny Communications Petition to Deny at 6, 7, 14-18, Exhibit A. Lake Charles, LA (CMA 197) is analyzed below in the other market section.

³⁰³ These four CMAs are Laredo, Texas 18, Texas 19, and Texas 20.

³⁰⁴ These four CMAs are Beaumont-Port Arthur, TX (CMA 101), Corpus Christi, McAllen-Edinburg-Mission, TX, and Brownsville-Harlingen.

³⁰⁵ These four CMAs are Galveston-Texas City, San Antonio, Victoria, and Texas 15.

³⁰⁶ 2010 U.S. Census data. Rural is defined as 100 people or less per square mile.

³⁰⁷ The post-merger HHI in Laredo would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], with a change of [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], in Texas 18 the post-merger HHI would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], with a change of [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], in Texas 19, the post-merger (continued....)

screen.³⁰⁸ In terms of market share, post-transaction AT&T would have approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent to [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent of subscribers in these markets.³⁰⁹ Indeed, in each of these CMAs, AT&T's market share would be approximately two to five times larger than the provider with the second largest market share.³¹⁰ In Laredo and Texas 19, the other three nationwide providers have significant market share,³¹¹ while in Texas 18 and Texas 20, two of the other three nationwide providers have significant market share.³¹² In each of these four CMAs, there are no additional facilities-based providers with significant share. Also, in these four CMAs, the percent of customers porting from AT&T to Leap range from approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent, which is higher than the average reported by the Applicants. The percentage of ports from Leap to AT&T is approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY

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HHI would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], with a change of [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], and in Texas 20, the post-merger HHI, would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] with a change of [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION].

³⁰⁸ Post-transaction, AT&T would hold 156 megahertz of total spectrum, including 40 megahertz of AWS-1, in Laredo; in Texas 18, 138-168 total megahertz of spectrum, including 40-50 megahertz of AWS-1; in Texas 19, 126-156 total megahertz of spectrum, including 20-50 megahertz of AWS-1; and in Texas 20, 125-160 total megahertz of spectrum, including 20 to 30 megahertz of AWS-1.

³⁰⁹ In Laredo, AT&T and Leap have [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] market shares, respectively; in Texas 18, AT&T and Leap have [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively; in Texas 19, AT&T and Leap have [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively and in Texas 20, AT&T and Leap hold [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] respectively.

³¹⁰ In Laredo, AT&T's share would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] times as large as the next largest provider; in Texas 18, AT&T's share would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] times as large, in Texas 19, AT&T's share would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] times as large and in Texas 20, AT&T's share would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] times as large.

³¹¹ In Laredo, Verizon Wireless, Sprint, and T-Mobile hold [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively. In Texas 19, Verizon Wireless, Sprint, and T-Mobile hold [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively.

³¹² In Texas 18, Verizon Wireless, Sprint, and T-Mobile hold [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively. In Texas 20, Verizon Wireless, Sprint, and T-Mobile hold [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively.

CONFIDENTIAL INFORMATION] percent, which is substantially higher than the average reported by the Applicants.³¹³

89. The loss of consumer choice in available network services varies across these four CMAs. The number of providers with significant 3G population coverage would decrease from five to four in Laredo, from four to three in Texas 19 and Texas 20, and from three to two in Texas 18.³¹⁴ In terms of land area coverage, the number of 3G providers would be unchanged in Laredo, Texas 18 and Texas 19, and would decrease from three to two providers in Texas 20.³¹⁵ In terms of LTE coverage, the number of providers covering a significant portion of the population would decrease from five to four in Laredo; there would be no change in Texas 18, Texas 19, or Texas 20, with no provider having significant LTE population coverage in Texas 19.³¹⁶ In terms of LTE land area coverage, there would be no change in the number of providers with significant land area coverage in these CMAs, with no provider having significant land area coverage in three of the four CMAs.³¹⁷

90. The spectrum screen is triggered in all four of these CMAs. In Laredo post-transaction, AT&T would be five megahertz over the screen. In Texas 18 post-transaction, AT&T would be over the screen by two to 17 megahertz on a county-by-county basis.³¹⁸ In Texas 20, AT&T would be over the screen by nine megahertz in three counties, one megahertz below the screen in two additional counties, and 26 megahertz below the screen in the remaining three counties.³¹⁹ In Texas 19 post-transaction, AT&T would be over the screen by five megahertz in two out of the 12 counties in the CMA, which account for approximately 33 percent of the CMA population and 14 percent of the CMA land area. In

³¹³ Using LNP (Applicant) data provided by AT&T, ports from AT&T to Leap are **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** % for Laredo, Texas 18, Texas 19, and Texas 20, respectively. Using 2013 LNP data, ports from Leap to AT&T are **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** % for Laredo, Texas 18, Texas 19, and Texas 20, respectively. Further, using Applicant data, ports by AT&T's pre-paid customers to Leap were approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** % for Laredo, Texas 18, Texas 19, and Texas 20, respectively.

³¹⁴ In Laredo, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile all cover more than 90% of the population with 3G. In Texas 19 and Texas 20, AT&T, Leap, Verizon Wireless, and Sprint all cover more than 70% of the population with 3G. In Texas 18, AT&T, Leap and Sprint cover more than 85% of the population with 3G.

³¹⁵ In Laredo, AT&T, Verizon Wireless, and Sprint all cover more than 75% of the land area with 3G. In Texas 18, AT&T covers approximately 90% of the land area with 3G. In Texas 19, AT&T and Verizon Wireless cover more than 70% of the land area with 3G. In Texas 20, AT&T, Leap, and Verizon Wireless cover 50% or more of the land area with 3G.

³¹⁶ In Laredo, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile all cover more than 90% of the population with LTE, in Texas 18, Sprint covers more than 85%, and in Texas 20, Verizon Wireless and Sprint cover more than 80%. In Texas 19, Sprint has the most extensive LTE population coverage of approximately 58 percent.

³¹⁷ In Laredo, Verizon Wireless has the most extensive LTE land area coverage of approximately 22%. In Texas 18 - Edwards, Sprint has the most extensive LTE land area coverage of approximately 36%. In Texas 19, Verizon Wireless has the most extensive LTE land area coverage of approximately 26%. In Texas 20, Verizon Wireless and Sprint cover 60% or more of the land area.

³¹⁸ AT&T would be over the 151 megahertz screen by 2 megahertz in two counties, by 7 megahertz in five counties, by 12 megahertz in 3 counties and by 17 megahertz in 1 county, and over the 132 megahertz screen (BRS is not available in this county) by 6 megahertz in 1 county.

³¹⁹ The three counties where AT&T would be 26 megahertz below the screen reflect approximately 29% of the population and 40% of the land area, respectively.

the remaining 10 counties AT&T would be below the screen by 15 to 25 megahertz. The three other nationwide providers hold 30 to 131.5 megahertz in these four CMAs, and there are additional licensees in each of these CMAs that hold spectrum.³²⁰

91. In all four of these CMAs, an analysis of market-specific factors indicates that the acquisition of Leap by AT&T may result in competitive harms. In each of these CMAs, Leap has had significant market share, with substantially more share in some of these CMAs, AT&T's post-transaction market share would be large, and there is a reduction in the number of significant facilities-based providers. In the three rural CMAs, the number of providers with significant 3G population coverage, which now can be considered baseline wireless coverage, would decrease from four to three or, in Texas 18, from three to two. In Laredo, we note that Leap's share is not much lower than AT&T's share and Leap covers a significant portion of the CMA population with LTE. The loss of such a strong independent facilities-based provider in the Laredo market may result in potential competitive harm, particular to the value-conscious consumer.

92. In the second group of four CMAs in south Texas, we conclude that potential competitive harm is limited to AT&T's post-transaction spectrum aggregation, which would result in an increased likelihood of foreclosure or of raising rivals' costs. Beaumont-Port Arthur, TX (CMA 101), Corpus Christi, TX (CMA 112), McAllen-Edinburg-Mission, TX (CMA 128), and Brownsville-Harlingen, TX (CMA 162) are non-rural markets with populations ranging from approximately 390,000 to 775,000 and population densities ranging from 185 to 493 people per square mile. Corpus Christi, McAllen-Edinburg-Mission, and Brownsville-Harlingen were identified by both the HHI screen³²¹ and the spectrum screen.³²² Beaumont-Port Arthur was identified only by the spectrum screen. Post-transaction, AT&T would hold between **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** percent market share in these four CMAs.³²³ In Corpus Christi,

³²⁰ Verizon Wireless holds 52 to 104 megahertz of spectrum in these four CMAs, Sprint holds 75.5-131.5 megahertz, and T-Mobile holds 30-60 megahertz. AT&T also would hold 40 megahertz of AWS-1 spectrum in Laredo, 40 to 50 megahertz in Texas 18, 20 to 50 megahertz in Texas 19, and 20-30 megahertz in Texas 20. In these four CMAs, Verizon Wireless holds 0-30 megahertz of AWS-1 and T-Mobile holds 20-30 megahertz.

³²¹ The post-transaction HHI in Beaumont-Port Arthur would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, with a change of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, in Corpus Christi the post-transaction HHI would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, with a change of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, in McAllen-Edinburg-Mission the post-transaction HHI would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** with a change of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, and in Brownsville-Harlingen, the post-transaction HHI would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** with a change of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**.

³²² Post-transaction, AT&T would hold 175 megahertz of total spectrum, including 30 megahertz of AWS-1 in Beaumont-Port Arthur, 170 megahertz of total spectrum, including 40 megahertz of AWS-1 in Corpus Christi, 180 megahertz of total spectrum, including 50 megahertz of AWS-1 in McAllen-Edinburg-Mission, and 180 megahertz of total spectrum, including 50 megahertz of AWS-1 in Brownsville-Harlingen.

³²³ In Beaumont-Port Arthur, AT&T and Leap hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively; in Corpus Christi, AT&T and Leap hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively; in McAllen-Edinburg-Mission, AT&T and Leap hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** (continued....)

McAllen-Edinburg-Mission, and Brownsville-Harlingen, the number of providers with significant market share would fall from five to four, and there is no change in Beaumont-Port Arthur. In each of these four CMAs, the other three nationwide providers have significant market share.³²⁴ Also, in these four CMAs, the percent of customers porting from AT&T to Leap range from approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], which for some CMAs generally tracks the average percentage of ports calculated by the Applicants and is higher in other CMAs. Also, in these four CMAs, the percent of customers porting from Leap to AT&T range from approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent,³²⁵ which generally tracks the average percentage of ports calculated by the Applicants.

93. In terms of coverage, the proposed transaction would result in a decrease from five to four in the number of providers with significant 3G population and land area coverage in Corpus Christi, McAllen-Edinburg-Mission, and Brownsville-Harlingen.³²⁶ In terms of LTE population coverage in these three CMAs, this would decrease the number of providers from five to four in Corpus Christi and Brownsville-Harlingen, and from four to three in McAllen-Edinburg-Mission.³²⁷ LTE land area coverage also would decline in these three CMAs from five to four providers in Brownsville-Harlingen, from four to three providers in Corpus Christi, and from three to two providers in McAllen-Edinburg-Mission.³²⁸ In Beaumont-Port Arthur, there would be a reduction from five to four providers in terms of 3G population

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[BEGIN HIGHLY CONFIDENTIAL INFORMATION], respectively; and in Brownsville-Harlingen, AT&T and Leap hold [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively.

³²⁴ In Beaumont-Port Arthur, Verizon Wireless, Sprint, and T-Mobile hold [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively; in Corpus Christi, Verizon Wireless, Sprint, and T-Mobile hold [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively; in McAllen-Edinburg-Mission, Verizon Wireless, Sprint, and T-Mobile hold [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively; and in Brownsville-Harlingen, Verizon Wireless, Sprint, and T-Mobile hold [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION], respectively.

³²⁵ Using 2013 LNP (Applicant) data, ports from AT&T to Leap are [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] % for Beaumont-Port Arthur, Corpus Christi, McAllen-Edinburg-Mission, and Brownsville-Harlingen, respectively. Using 2013 LNP data, ports from Leap to AT&T are [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] % for Beaumont-Port Arthur, Corpus Christi, McAllen-Edinburg-Mission, and Brownsville-Harlingen, respectively. Further using Applicant data, ports by AT&T's pre-paid customers to Leap were approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] % for Beaumont-Port Arthur, Corpus Christi, McAllen-Edinburg-Mission, and Brownsville-Harlingen, respectively.

³²⁶ In Corpus Christi, McAllen-Edinburg-Mission, and Brownsville-Harlingen, AT&T, Leap, Verizon Wireless, Sprint and T-Mobile cover at least 90 % of the population and 51 % of the land area with 3G.

³²⁷ In Corpus Christi and Brownsville-Harlingen, AT&T, Leap, Verizon Wireless, Sprint and T-Mobile cover at least 75 % of the population with LTE. In McAllen-Edinburg-Mission, AT&T, Leap, Verizon Wireless and T-Mobile cover at least 84% of the population with LTE.

³²⁸ In Brownsville-Harlingen, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile cover at least 55% of the land area with LTE; in Corpus Christi, AT&T, Leap, Verizon Wireless, and Sprint, cover at least 54%; and in McAllen-Edinburg-Mission, AT&T, Leap, and Verizon Wireless cover at least 53%.

coverage and no change in terms of either 3G land area or LTE population and land area coverage.³²⁹

94. The spectrum screen is triggered throughout Beaumont-Port Arthur and Corpus Christi and in parts of McAllen-Edinburg-Mission and Brownsville-Harlingen. Post-transaction, AT&T would hold 170 to 175 megahertz throughout Beaumont-Port Arthur and Corpus Christi. The other four nationwide providers also hold spectrum throughout these CMAs. Specifically, Verizon Wireless holds 77 to 92 megahertz in these four CMAs, Sprint holds 99 to 111.5 megahertz, and T-Mobile holds 45 to 70 megahertz. Therefore post-transaction, AT&T would hold 1.8 to 2.3 times as much spectrum in these CMAs as Verizon Wireless, 1.6 to 1.8 times as much as Sprint, and 2.6 to 3.9 times as much as T-Mobile. Although there are a few other licensees, the amount of spectrum not deployed for mobile wireless services is limited.³³⁰ In three of these CMAs, AT&T would hold 40-50 megahertz of AWS-1 spectrum and the remaining 40-50 megahertz is held by Verizon Wireless and T-Mobile.³³¹

95. In Beaumont-Port Arthur, Corpus Christi, McAllen-Edinburg-Mission, and Brownsville-Harlingen, a review of market factors indicates that this transaction is unlikely to result in significant competitive harm from a loss of a competitor, but that the transaction could potentially raise rivals costs in these markets due to AT&T's spectrum aggregation of 19 to 29 megahertz over the screen. AT&T's spectrum holdings in these markets are substantially higher than the spectrum holdings of the other significant market participants by a magnitude of at least 1.5. Further, the amount of spectrum held by other licensees in this market that have not deployed mobile wireless services is extremely limited. Therefore, the ability of the other significant providers to expand capacity or deploy new and innovative services would likely be harmed by the amount of spectrum held by the merged entity.

96. We find no likelihood of competitive harm in the final group of four CMAs in south Texas. Three of the CMAs trigger the HHI screen – San Antonio, TX (CMA 33), Victoria, TX (CMA 300), and Texas 15 – Concho (CMA 666), while Galveston-Texas City, TX (CMA 170) triggers both the HHI and spectrum screens.³³² Post-transaction, AT&T would hold between **[BEGIN HIGHLY**

³²⁹ In Beaumont-Port Arthur, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile cover at least 88 percent of the population with 3G. Also in this CMA, AT&T, Verizon Wireless, Sprint, and T-Mobile cover at least 65 percent of the land area with 3G and at least 75 percent of the population with LTE. AT&T, Verizon Wireless and Sprint cover at least 74 percent of the land area with LTE.

³³⁰ In all four CMAs, Cavalier Wireless holds the 700 MHz A block license, and Echostar holds six megahertz of unpaired 700 MHz spectrum. Further, Command Connect holds 20 megahertz of AWS-1 spectrum in Beaumont-Port Arthur.

³³¹ In Corpus Christi, AT&T would hold 40 megahertz of AWS-1 spectrum, Verizon Wireless 20 megahertz, and T-Mobile 30 megahertz. In McAllen-Edinburg-Mission, AT&T would hold 50 megahertz of AWS-1 spectrum and T-Mobile holds 40 megahertz. In Brownsville-Harlingen, AT&T would hold 50 megahertz of AWS-1 spectrum and T-Mobile holds 40 megahertz.

³³² The post-transaction HHI in San Antonio would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, with a change of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, in Victoria the post-transaction HHI would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, with a change of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, in Texas 15 the post-transaction HHI would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** with a change of **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** and in Galveston-Texas City the post-transaction HHI would be **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**.

CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] percent market share in these four CMAs.³³³ In San Antonio and Galveston-Texas City, the number of providers with significant market share would fall from five to four and would remain unchanged in Victoria and Texas 15.³³⁴ Also, in these four CMAs, the percent of customers porting from AT&T to Leap range from approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]** percent, which generally tracks the average percentage of ports calculated by the Applicants. The percent of customers porting from Leap to AT&T range from approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]** percent,³³⁵ which for some CMAs generally tracks the average percentage of ports calculated by the Applicants and is higher in other CMAs.

97. In terms of coverage, the proposed transaction would result in a decrease from five to four providers with significant 3G population and land area coverage in San Antonio as well as a decrease from five to four providers with, significant LTE population coverage.³³⁶ The number of providers with significant LTE land area coverage in San Antonio would remain unchanged. In Galveston-Texas City, the transaction would result in a decrease from five to four of 3G population and land area coverage.³³⁷ In Victoria, the transaction would result in a decrease from five to four and three to two of 3G population

³³³ In San Antonio, AT&T and Leap hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]**, respectively; in Galveston-Texas City, AT&T and Leap hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]**, respectively; in Victoria, AT&T and Leap hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]**, respectively; and in Texas 15, AT&T and Leap hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]**, respectively.

³³⁴ In San Antonio, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]**, respectively; in Galveston-Texas City, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]**, respectively; in Victoria, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]**, respectively; and in Texas 15, Verizon Wireless, Sprint, T-Mobile, Central Texas Telephone Cooperative, and Five Star Wireless hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]**, respectively.

³³⁵ Using 2013 LNP (Applicant) data, ports from AT&T to Leap are **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]** % for San Antonio, Galveston-Texas City, Victoria, and Texas 15, respectively. Using 2013 LNP data, ports from Leap to AT&T are **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]** % for San Antonio, Galveston-Texas City, Victoria, and Texas 15, respectively. Further using Applicant data, ports by AT&T's pre-paid customers to Leap were approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION]** % for San Antonio, Galveston-Texas City, Victoria, and Texas 15, respectively.

³³⁶ In San Antonio, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile cover at least 97% of the population and 74% of the land area with 3G. In terms of LTE, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile cover at least 91 % of the population and AT&T, Verizon Wireless, Sprint, and T-Mobile cover at least 52% of the land area.

³³⁷ In Galveston-Texas City, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile cover at least 98% of the population and 83% of the land area with 3G. In terms of LTE, Leap, Verizon Wireless, and Sprint cover at least 96% of the population and at least 77% of the land area.

and land area coverage, respectively.³³⁸ In Texas 15, there is no change in the number of providers with significant 3G and LTE population and land area coverage.³³⁹ Post-transaction, AT&T would hold 103 to 155 megahertz of spectrum in these four CMAs³⁴⁰ and each of the significant providers hold 30 to 133.5 megahertz.³⁴¹

98. In these final four markets, a review of market factors indicates that this transaction is unlikely to result in significant competitive harm from a loss of a competitor. In San Antonio, in addition to the merged entity three other significant providers will remain and each of these has significant 3G and LTE population and land area coverage. In Galveston-Texas City, in addition to the merged entity three other significant providers will remain and each of these has significant 3G population and land area coverage. In Victoria and Texas 15, Leap is not a significant provider and in Texas 15, Leap does not provide significant 3G coverage.

(iii) Other Markets

99. In an additional five CMAs, we find that the proposed transaction is likely to result in competitive harm from AT&T's post-transaction spectrum aggregation. The five CMAs are: Spokane, WA (CMA 109), Reno, NV (CMA 171), Lake Charles, LA (CMA 197), Kansas 5 – Brown (CMA 432), and Nevada 3 – Storey (CMA 545). Spokane and Lake Charles are non-rural markets with populations of approximately 500,000 and 200,000, and population densities of 267 and 181 people per square mile, respectively. Reno, Kansas 5, and Nevada 3 are rural markets, with populations ranging from approximately 125,000 to 421,000, and population densities ranging from 50 to 67 people per square mile. These CMAs were identified by both the HHI screen³⁴² and the spectrum screen.³⁴³

³³⁸ In Victoria, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile cover at least 88% of the population, and AT&T, Leap, and Verizon Wireless cover at least 92% of the land area with 3G. Sprint and T-Mobile cover slightly less than 50% of the land area with 3G. In terms of LTE, AT&T, Verizon Wireless, and Sprint cover at least 97% of the population and at least 76% of the land area.

³³⁹ In Texas 15, AT&T, Verizon Wireless, and Sprint cover at least 80% of the population, and only AT&T has significant land area coverage with 3G. In terms of LTE, only Sprint has significant population coverage in this CMA, and no provider covers a significant portion of the land area of this CMA with LTE.

³⁴⁰ AT&T would hold 140 megahertz in San Antonio, 155 megahertz in Galveston-Texas City, 150 megahertz in Victoria, and 103-143 megahertz in Texas 15.

³⁴¹ Verizon Wireless holds 84 megahertz in San Antonio, 109 megahertz in Galveston-Texas City, 104 megahertz in Victoria, and 52-109 megahertz in Texas 15. Sprint holds 112.75-113.75 megahertz in San Antonio, 103.875 megahertz in Galveston-Texas City, 103.25 megahertz in Victoria, and 77.25-133.5 megahertz in Texas 15. T-Mobile holds 70 megahertz in San Antonio, 60 megahertz in Galveston-Texas City, 70 megahertz in Victoria, and 30-50 megahertz in Texas 15.

³⁴² The post-transaction HHI would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] in Spokane, Reno, Lake Charles, Kansas 5, and Nevada 3, respectively. The change in the HHI would be [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] in these respective markets.

³⁴³ Post-transaction in Spokane, AT&T would hold 165 megahertz of total spectrum, including 40 megahertz of AWS-1, in Reno, 165 megahertz of total spectrum, in Lake Charles, 180 megahertz of total spectrum, including 40 megahertz of AWS-1, in Kansas 5, 123-178 megahertz of total spectrum, in Nevada 3, 163 megahertz of total spectrum, including 40 megahertz of AWS-1.

100. Leap does not have a significant market share in these five CMAs, with the exception of Reno.³⁴⁴ Post-transaction, AT&T would hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** percent of the market share in these CMAs.³⁴⁵ The other three nationwide service providers have a significant market share in Spokane, Reno, Kansas 5, and Nevada 3.³⁴⁶ In Lake Charles, two of the other nationwide service providers have a significant market share.³⁴⁷ In terms of coverage, the transaction would result in a decrease in the number of providers with significant 3G population coverage in Spokane and Reno from five to four, and from four to three in Lake Charles.³⁴⁸ There would be a decrease in the number of providers with significant 3G land area coverage from five to four in Spokane, four to three in Lake Charles, and no change in Reno.³⁴⁹ In Kansas 5 and Nevada 3, Leap does not have significant 3G population or land area coverage,³⁵⁰ so there is no decline in the number of providers with significant 3G coverage. Further, Leap does not have LTE population or land area coverage in any of these five CMAs, so there is no decrease in the number of providers with that coverage.

101. Post-transaction, AT&T would hold 165 megahertz of spectrum throughout Spokane and Reno and 163 megahertz throughout Nevada 3. The other three nationwide providers hold between 50 and 114 megahertz of spectrum in these CMAs,³⁵¹ and AT&T's post-transaction spectrum holdings would

³⁴⁴ Leap holds **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** in Spokane, Lake Charles, Kansas 5, and Nevada 3, respectively. In Reno, Leap holds a **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** share. In Reno, according to 2013 LNP (Applicant) data, approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** % of AT&T's subscribers port to Leap and approximately **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of Leap's subscribers port to AT&T.

³⁴⁵ Post-transaction, AT&T would hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** in Spokane, Reno, Lake Charles, Kansas 5, and Nevada 3, respectively.

³⁴⁶ In Spokane, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively. In Reno, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively. In Kansas 5, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively. In Nevada 3, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]**, respectively.

³⁴⁷ In Lake Charles, Verizon Wireless, Sprint, and T-Mobile hold **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** respectively.

³⁴⁸ In Spokane, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile all cover at least 95% of the population. In Reno, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile all cover at least 86% of the population. In Lake Charles, AT&T, Leap, Verizon Wireless, and Sprint cover at least 95% of the population.

³⁴⁹ In Spokane, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile all cover at least 53% of the land area. In Reno, AT&T, Leap, Verizon Wireless, Sprint, and T-Mobile all cover less than approximately 40% of the land area. In Lake Charles, AT&T, Leap, Verizon Wireless, and Sprint cover at least 76% of the land area.

³⁵⁰ Leap covers approximately 46% of the population and 6% of the land area in Kansas 5, and covers approximately 58% of the population and 7% of the land area in Nevada 3.

³⁵¹ In Spokane, Verizon Wireless, Sprint, and T-Mobile hold 87, 87.25, and 60 megahertz of spectrum, respectively. In Reno, Verizon Wireless, Sprint, and T-Mobile hold 77, 114, and 60 megahertz of spectrum, respectively. In (continued....)

be 1.4 to 3.3 times as great as the other significant providers. In Lake Charles, post-transaction AT&T would hold 180 megahertz throughout the CMA. The other three nationwide providers hold between 50 and 104 megahertz of spectrum,³⁵² and AT&T's post-transaction spectrum holdings would be 1.7 to 2.5 times as great as the other significant providers.³⁵³ In Kansas 5, AT&T would hold 123 to 178 megahertz of spectrum. In this CMA, AT&T is above the screen in three out of five counties, which reflect approximately 81 percent of the population of the CMA. The other three nationwide providers hold between 40 and 119 megahertz of spectrum. In Spokane, Reno, Lake Charles, and Nevada 3, there is a small amount of paired spectrum that has not been deployed for a mobile wireless network.³⁵⁴ In Kansas 5, there are several licensees that hold paired spectrum that has not been deployed for a mobile wireless network, but only one of these licensees holds spectrum throughout the CMA.³⁵⁵

102. Based on this analysis, we find that in these five CMAs AT&T's spectrum aggregation as a result of the instant transaction is likely to raise rivals' costs of providing mobile wireless services. Post-transaction, AT&T would hold significantly more spectrum than the other significant providers and in each of these markets there is little paired spectrum that has not been deployed for mobile wireless services. Therefore, in order to add capacity or offer new and innovative services, the other service providers in these markets would need to use alternative and likely more costly means to achieve these, than AT&T.

3. Roaming

103. *Background.* Roaming occurs when a subscriber of one mobile wireless provider travels beyond the service area of that provider and uses the facilities of another mobile wireless provider to place and receive calls, continue in-progress calls, and transmit and receive data.³⁵⁶

104. Several petitioners and commenters argue that despite Leap's limited geographic footprint, the loss of Leap as a roaming partner reduces competitive pressure on nationwide providers to

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Nevada 3, Verizon Wireless, Sprint, and T-Mobile hold 77, 97.5-114, and 50 megahertz of spectrum, respectively. Further, in Spokane and Nevada 3, Verizon Wireless holds 20 megahertz AWS-1, and T-Mobile holds 30 megahertz.

³⁵² In Lake Charles, Verizon Wireless and Sprint hold 72 and 104 megahertz of spectrum, respectively. Further, Verizon Wireless and T-Mobile each hold 20 megahertz of AWS-1, and Command Connect holds the remaining 10 megahertz.

³⁵³ AT&T would hold approximately 3.6 times as much spectrum as T-Mobile, which covers over 60% of the CMA population with 3G and LTE and has a [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] market share.

³⁵⁴ In Spokane, Cavalier Wireless holds 12 megahertz, in Reno, Triad holds 12 megahertz of spectrum, in Lake Charles, Command Connect holds 10 megahertz and CenturyTel holds 12 megahertz, and in Nevada 3, Cleartalk and Triad each hold 12 megahertz of spectrum.

³⁵⁵ In Kansas 5, Gabelli holds 0-10 megahertz, Rainbow Communications 12 megahertz, Tri-County Telecommunications 0-10 megahertz, U.S. Cellular 0-22 megahertz, and Viaero Wireless 0-20 megahertz. Some of these licensees have a small amount of coverage in this CMA – U.S. Cellular covers 3.5% of the population and Viaero Wireless covers 1.4% of the population.

³⁵⁶ See, e.g., *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10729 ¶ 81; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17612 ¶ 52; *AT&T-Verizon Wireless-ALLTEL Order*, 25 FCC Rcd at 8741 ¶ 87. See also Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Second Report and Order*, 26 FCC Rcd 5411 (2011), *aff'd sub nom. Cellco Partnership v. FCC*, 700 F.3d 534 (DC Cir. 2012) (“*Data Roaming Order*”).

maintain reasonable roaming rates and to compete fairly in the marketplace.³⁵⁷ The commenters argue that loss of Leap as a roaming partner will increase roaming rates,³⁵⁸ particularly those faced by small and rural providers,³⁵⁹ and in the clusters identified by Youghioghney Communications.³⁶⁰ Several parties also assert that AT&T has refused to offer data roaming agreements to other providers at commercially reasonable terms and conditions, a problem that may be exacerbated by this transaction.³⁶¹ Some petitioners contend that the data roaming rule adopted by the Commission in 2011 does not address these concerns, because even under the rule providers have difficulty negotiating reasonable roaming arrangements with the top two nationwide providers.³⁶²

105. To remedy these alleged harms, the commenters request certain roaming-related conditions. Many of these requested conditions are based on the perceived inadequacy of the Commission's current roaming rules. NTCH and Youghioghney Communications, for instance, request that similar rates as the current CDMA roaming rates be applied to the future GSM/LTE network, once the network is transitioned.³⁶³ Youghioghney Communications also requests that AT&T be required to continue or improve upon Leap's roaming terms for a period of at least five years.³⁶⁴ Blue Wireless

³⁵⁷ See CCA Petition to Condition at 6-7, 15-17. See also CCA Reply at 6, 11-15; RWA Reply at 3-4; Youghioghney Communications Petition to Deny at 11-14, 29; Youghioghney Communications Jan. 8, 2014 *Ex Parte* at 2-3, 5-9; Youghioghney Communications Feb. 3, 2014 *Ex Parte* at 2-3; NTCH, Inc. (NTCH) Petition to Deny or Condition at 3-4. See also NTCH Reply at 4; IAE Declaration at 12-14, 28; Youghioghney Communications Reply at ii, 11-12; Letter from Donald J. Evans, Counsel for Buffalo-Lake Erie Wireless Systems, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193, at 2-3 (filed Jan. 6, 2014) ("Blue Wireless Jan. 6, 2014 *Ex Parte*"); Letter from Michael Lazarus and Andrew Morentz of Telecommunications Law Professionals, PLLC, Counsel to Competitive Carriers Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193, at 1-4 (filed Jan. 3, 2014) ("CCA Jan. 3, 2014 *Ex Parte*"); Letter from Michael Lazarus and Andrew Morentz of Telecommunications Law Professionals, PLLC, Counsel to Competitive Carriers Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193, at 2-3 (filed Feb. 6, 2014) ("CCA Feb. 6, 2014 *Ex Parte*").

³⁵⁸ See generally Smith Reply at 9. See also CCA Petition to Condition at 7, 15-17; RWA Comments at 5; Youghioghney Communications Jan. 8, 2014 *Ex Parte* at 8-9; Youghioghney Communications Jan. 29, 2014 *Ex Parte* at 1. See also NTCH Reply at 2-4. See also Youghioghney Communications Jan 8, 2014 *Ex Parte* at 2, 6.

³⁵⁹ See CCA Petition to Condition at 6-7, 16. See also CCA Reply at 6-7; NTCH Petition to Deny or Condition at 2-5; NTCH Reply at 3-4; Youghioghney Communications Petition to Deny at 11-16; IAE Declaration at 16-17; Youghioghney Communications Feb. 6, 2014 *Ex Parte* at 5.

³⁶⁰ See Youghioghney Communications Petition to Deny at 32-33; IAE Declaration at 20. See also IAE Feb. 28, 2014 *Ex Parte* at 2-3.

³⁶¹ See CCA Petition to Condition at 15-17. See also CCA Reply at 6-7, 12; NTCH Petition to Deny or Condition at 2-4 (discussing AT&T and Verizon); NTCH Reply at 2-4; Youghioghney Communications Petition to Deny at 11-14 (discussing AT&T and Verizon); IAE Declaration at 16; IAE Reply Declaration at 7, 16-17; CCA Jan. 3, 2014 *Ex Parte* at 2-3; CCA Feb. 6, 2014 *Ex Parte* at 2-4; Youghioghney Communications Jan. 8, 2014 *Ex Parte* at 2, 8-14, 19; Youghioghney Communications Feb. 3, 2014 *Ex Parte* at 2-4.

³⁶² See CCA Petition to Condition at 15-17. See also RWA Reply at 3; Flat Wireless, LLC, Jan. 6, 2014 *Ex Parte* at 3-4; Youghioghney Communications Jan. 8, 2014 *Ex Parte* at 6-9, 15-16, 19; Letter from Martyn Roetter and Alan Pearce, Information Age Economics, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193, at 1-3 (filed Feb. 5, 2014) ("IAE Feb. 5, 2014 *Ex Parte*").

³⁶³ See NTCH Petition to Deny or Condition at 1, 4. See also Youghioghney Communications Petition to Deny at 14, 33; Youghioghney Communications Reply at 12-13.

³⁶⁴ See Youghioghney Communications Petition to Deny at 14, 33. See also Youghioghney Communications Reply at 12-13.

contends that Leap has recently been offering inflated roaming rates in anticipation of these conditions, and that AT&T should be required to offer roaming rates that do not exceed those rates offered by Leap prior to its entry into the merger agreement.³⁶⁵ Youghioghney Communications and IAE also describe several methods that could be used to determine voice and data roaming rates.³⁶⁶ Flat Wireless requests unspecified protections for Leap's current roaming partners, to reduce the effects of this transaction on CDMA roaming.³⁶⁷ Other requested conditions, discussed below, address transitional issues related to AT&T's plans to decommission Leap's CDMA network facilities.

106. Leap specifies that with a few exceptions, their roaming agreements are terminable by either party for convenience upon the requisite written notice to the other party. The exceptions include agreements with Sprint, MetroPCS, and Flat Wireless.³⁶⁸ The Applicants respond that no roaming conditions should be imposed because Leap "is not a significant provider of roaming services," and "alternative roaming providers exist across virtually all of Leap's network footprint," therefore this transaction will not significantly affect options for CDMA roaming.³⁶⁹ In response to Blue Wireless, Leap replies that Blue Wireless was not a roaming partner of Leap at the time the transaction was announced, and that they are using the pendency of the current transaction to extract concessions.³⁷⁰ Leap does not provide any LTE roaming.³⁷¹

107. *Discussion.* With regard to the arguments expressing concern about the availability of

³⁶⁵ See Blue Wireless Jan. 6, 2014 *Ex Parte* at 3-4. See also Youghioghney Communications Feb. 3, 2014 *Ex Parte* at 2-4; Youghioghney Communications Jan. 29, 2014 *Ex Parte* at 1.

³⁶⁶ See Youghioghney Communications Feb. 6, 2014 *Ex Parte* at 2-4, 5; Youghioghney Communications Jan. 8, 2014 *Ex Parte* at 8, 12-19. See also Letter from Donald J. Evans, Counsel for Youghioghney Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193 (filed Feb. 7, 2014) ("Youghioghney Communications Feb. 7, 2014 *Ex Parte*"); IAE Jan. 8, 2014 *Ex Parte* at 8, 12-19; IAE Feb. 28, 2014 *Ex Parte* at 3-5 (arguing for additional conditions including a requirement for AT&T to file with the Commission all roaming agreements with wireless providers in the United States and Canada, publish certain roaming rates, and sign roaming agreements with at least two small providers).

³⁶⁷ See Flat Wireless Jan. 6, 2014 *Ex Parte* at 4.

³⁶⁸ See Nov. 22, 2013 Leap Initial Response at 20-21, where Leaps states that **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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³⁶⁹ See Joint Opposition at 39, 41. See also Public Interest Statement, Declaration of Robert A. Strickland at 1.

³⁷⁰ See Leap Jan. 16, 2014 *Ex Parte* at 3.

³⁷¹ See Nov. 22, 2013 AT&T Initial Response at 70.

roaming, we find that the Commission's general roaming policies and rules should ensure that entities can obtain roaming agreements on reasonable terms and conditions. In the event that a service provider, including Youghioghny Communications, NTCH, or any member of CCA, encounters difficulties in obtaining reasonable roaming services or roaming rates under our rules and policies, it can file complaints with the Commission pursuant to our established roaming rules.³⁷² We conclude that any roaming rate or term related conditions proposed by commenters are not narrowly tailored to remedy any purported harms arising out of this transaction.

108. The Commission has recognized, however, that the continued ability of wireless customers to roam is an important concern when wireless service providers intend to transition network technology as a result of a proposed transaction.³⁷³ Thus, the Commission has previously conditioned consent of a proposed transaction on the ability of wireless service providers to have access, on behalf of their customers, to roaming services in the areas affected by the transaction for an orderly transition.³⁷⁴ We address below issues relating to the provision of roaming services provided on Leap's CDMA network during its network transition while providers are making alternative roaming arrangements.

C. Other Issues

109. *Customer Migration.* We also consider potential public interest harms associated with the transition of Leap customers, particularly given that, with the planned discontinuance of Leap's CDMA-based network, customers wishing to remain with the Cricket brand necessarily will be migrating from that network onto a GSM-based network. AT&T's original statements – in the Public Interest Statement – were limited only to general representations, *e.g.*, that it expects to complete migration of Leap customers to AT&T's networks within 18 months of closing.³⁷⁵ In a supplement filed on August 20, 2013, the Applicants asserted that, after merger close, it will honor the existing plan of each Leap customer, provided that the customer does not suspend or terminate his or her service for that plan, or choose to upgrade to a device or plan that is not comparable to his or her current device or plan.³⁷⁶ AT&T contends that it plans to combine the nascent operations of Aio Wireless with Leap's existing operations under the Cricket brand name, claiming that this will allow Leap customers to migrate to AT&T's network organically.³⁷⁷ Applicants estimate that **[BEGIN CONFIDENTIAL INFORMATION] [END CONFIDENTIAL INFORMATION]** percent of Leap's customers replace handsets every 18 months.³⁷⁸ AT&T leaves open the possibility that it may formulate offers designed to encourage Leap customers to migrate to its network, as it learns more about Leap's customer base.³⁷⁹ In

³⁷² See Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, WT Docket No. 05-265, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15817, 15828 ¶ 27 (2007); Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4181, 4192 ¶ 2 (2010); *Data Roaming Order*, 26 FCC Rcd at 5411.

³⁷³ See *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8746-8748 ¶¶ 95-101. See also *AT&T-ATN Order*, 28 FCC Rcd at 13702-13703 ¶ 59-60.

³⁷⁴ See *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8746-8748 ¶¶ 95-101. See also *AT&T-ATN Order*, 28 FCC Rcd at 13702-13703 ¶ 59-60.

³⁷⁵ See Public Interest Statement at 16.

³⁷⁶ See Aug. 20, 2013 Applicants Supplemental Response at 2.

³⁷⁷ See Aug. 20, 2013 Applicants Supplemental Response at 2.

³⁷⁸ Joint Opposition at n.26.

³⁷⁹ See Aug. 20, 2013 Applicants Supplemental Response at 3.

addition, AT&T notes that migrating Leap customers will have the opportunity to “bring their own devices,” which will allow them to use any unlocked and technically compatible phone on AT&T’s network.³⁸⁰

110. In response to the assertions made by the Applicants in the Public Interest Statement and the August 20, 2013 Supplement, several parties in their Petitions to Deny argue that AT&T’s proposed customer transition plans are insufficient. Public Knowledge believes that AT&T has failed to explain whether it will honor the terms and conditions Leap provides to existing Leap customers, such as unlimited voice, text, and data.³⁸¹ Youghioghny Communications contends that the proposed transaction offers no benefit or certainty to existing Leap customers because AT&T has only promised that it *may* formulate offers designed to further encourage the migration of those Leap customers that do not migrate to the AT&T network on their own, and that if anything, former Leap customers, rather than gaining anything, will be losing Cricket’s unique “Muve” music service.³⁸² Youghioghny Communications argues that AT&T’s bring-your-own-device option is worthless because existing Leap CDMA devices are incompatible with AT&T’s network and unlocked devices are likely to be more expensive to obtain.³⁸³ Youghioghny Communications argues that AT&T should be required to present a more concrete transition plan and suggests a condition to ensure that Cricket’s customers are not forced to buy new phones and pay higher prices if they migrate to the AT&T network.³⁸⁴ Finally, Youghioghny Communications asserts that, because Leap’s customer base is exclusively prepaid, the transition problems that concerned the Commission in connection with the ATN deal are magnified here because any palliative used to soften the effects of the transaction on Leap’s customers may erase the cost-saving benefits claimed by the Applicants.³⁸⁵

111. On October 24, 2013, in its Joint Opposition, AT&T states that it has agreed that, for a period of 18 months after closing, Cricket will offer a \$40 per month (including all taxes and fees) prepaid plan featuring unlimited talk, text and data and no roaming charges to new and existing customers in California.³⁸⁶ AT&T adds that it intends to offer the same \$40 per month prepaid plan wherever the Cricket brand is available nationwide during the same 18-month period.³⁸⁷ AT&T claims, in fact, that its preliminary migration plans are substantially similar to those approved in the *T-Mobile-MetroPCS Order*.³⁸⁸ AT&T has provided no new proposals regarding customer migration in its November 22, 2013, Initial Response to the Information and Discovery Request, its January 3, 2014, Second Supplemental Response, or its January 23, 2014, Third Supplemental Response, apart from noting that examples of possible incentive offers under discussion included **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

³⁸⁰ Aug. 20, 2013 Applicants Supplemental Response at 2-3.

³⁸¹ See Public Knowledge Petition to Deny at 17-18.

³⁸² See Youghioghny Communications Petition to Deny at 22; Youghioghny Communications Reply at 15.

³⁸³ See Youghioghny Communications Petition to Deny at 23.

³⁸⁴ See Youghioghny Communications Petition to Deny at 24; Youghioghny Communications Reply at 13.

³⁸⁵ See Youghioghny Communications Petition to Deny at 23.

³⁸⁶ See Joint Opposition at 7; Letter from J. David Tate, General Attorney & Associate General Counsel, AT&T, to Ryan Dulin, Director, Communications Division, California Public Utilities Commission, re Notice by AT&T Inc. of Proposed Indirect Transfer of Control of Cricket Communications, Inc. (U-3076-C) at 6 (filed Oct. 8, 2013).

³⁸⁷ See Joint Opposition at 7.

³⁸⁸ See *id.* at 7-8.

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112. With respect to the similarities between this transaction's customer migration plans and those in T-Mobile/MetroPCS, Public Knowledge responds that the plans are actually quite different from those approved in the *T-Mobile-MetroPCS Order*. According to Public Knowledge, AT&T conditions upgrades on giving up existing Leap plans, while T-Mobile's customers do not have to choose between an updated device and abandoning MetroPCS's rates, terms, and conditions.³⁹⁰ Mr. Smith argues that Applicants will honor the flexible, no-commitment plans Leap customers have already chosen only if those customers accept what amounts to a contract not to change the terms of their service arrangement, which is exactly the type of fixed agreement that Mr. Smith and other Leap customers consciously sought to avoid in the first place.³⁹¹ Mr. Smith also argues that this transaction will force Cricket's existing customers to purchase new equipment that is compatible with AT&T's network.³⁹²

113. In its February 5, 2014, Fourth Supplemental Response, AT&T added that the New Cricket will offer [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION].³⁹³ It is also considering offering certain discounts, credits, and incentives to some customers,³⁹⁴ but makes no commitments in that respect. AT&T asserts that as of December 2013, more than [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] of Leap's subscribers upgraded their devices during the preceding 18-month period, and approximately [BEGIN HIGHLY CONFIDENTIAL INFORMATION] [END HIGHLY CONFIDENTIAL INFORMATION] of Leap's subscribers upgraded their devices during the preceding 12-month period.³⁹⁵ Based in part on the Applicants' churn estimates [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

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114. AT&T addresses the migration of existing Cricket Lifeline customers starting in its Second Supplemental Response of January 3, 2014. Through its ETC status in various states, Cricket provides Lifeline service by giving Lifeline customers a \$10 discount from Cricket's monthly plans,³⁹⁷ which can run as low as \$35 per month.³⁹⁸ [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION] AT&T had committed to the California PUC to maintain its ETC status and to

³⁸⁹ See Jan. 23, 2014 AT&T Third Supplemental Response at 7.

³⁹⁰ See Public Knowledge Reply at 12.

³⁹¹ See Smith Reply at 10.

³⁹² See Smith Reply at 10.

³⁹³ See Feb. 5, 2014 AT&T Fourth Supplemental Response at 3-4.

³⁹⁴ See Feb. 5, 2014 AT&T Fourth Supplemental Response at 4-5.

³⁹⁵ See Feb. 5, 2014 AT&T Fourth Supplemental Response at 5.

³⁹⁶ See Feb. 5, 2014 AT&T Fourth Supplemental Response at 9.

³⁹⁷ See Cricket Lifeline Credit, <http://www.mycricket.com/support/cricket-lifeline-credit> (last visited Mar. 11, 2014).

³⁹⁸ See Cricket Cell Phone Plans & Deals, available at <http://www.mycricket.com/cell-phone-plans#basic-plans> (last visited Mar. 11, 2014).

provide Lifeline service there for the duration of the 18 months post-merger close.³⁹⁹ AT&T has also stated that it would honor the existing plan of each Leap customer as of merger close.⁴⁰⁰

115. In its February 5, 2014, Fourth Supplemental Response,⁴⁰¹ AT&T discussed **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION].⁴⁰² In a March 12, 2014 *Ex Parte* filing, AT&T indicates that “it would maintain Cricket’s ETC designations for some period of time. As such, Cricket will continue to fulfill its Lifeline ETC obligations and comply with relevant requirements. Should Cricket decide to cease participating in the Lifeline program, it would comply with applicable procedures to effectuate such a decision (including applicable relinquishment procedures).”⁴⁰³

116. As discussed above, the Applicants initially provided very little in the way of detailed description of their customer transition plans. In particular, AT&T represented that it has had experience transitioning customers in previous transactions, many of which involved similar migration plans (although we note that those were from 2G to 3G networks).⁴⁰⁴ The Applicants assert that “AT&T has a history of successfully integrating networks, including the integration of CDMA-based networks and the migration of existing customers, including prepaid customers, from those networks.”⁴⁰⁵ However, AT&T’s merger integration strategy largely relies on **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

³⁹⁹ See Jan. 3, 2014 AT&T Second Supplemental Response at n.12. In the Jan. 3, 2014 Second Supplemental Response at 8, AT&T explicitly agreed to continue CDMA service to Lifeline customers “[a]s long as [the] Lifeline customer does not suspend or terminate his or her service for that Lifeline plan or choose to upgrade to a device or plan that is not comparable to his or her current Lifeline device or plan. . . until AT&T terminates consumer-based CDMA services,” which will happen within 18 months of merger close, and in some places, within **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of merger close. In its January 23, 2014, Third Supplemental Response, AT&T reiterated that “Lifeline customers will be permitted to terminate their CDMA service at any time and may move to alternative Lifeline service providers.” Jan. 23, 2014 AT&T Third Supplemental Response at 9.

⁴⁰⁰ See Nov. 22, 2013 AT&T Initial Response at 45.

⁴⁰¹ See Feb. 5, 2014 AT&T Fourth Supplemental Response at 3.

⁴⁰² See Letter from Donald J. Evans, Counsel for Youghioghney Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193, at 2 (Feb. 14, 2014) (“Youghioghney Communications Feb. 14, 2014 *Ex Parte*”). See also Letter from Donald J. Evans, Counsel for Youghioghney Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193, at 3 (Mar. 10, 2014) (“Youghioghney Communications Mar. 10, 2014 Clyburn Office *Ex Parte*”).

⁴⁰³ See Letter from Mary L. Henze, Assistant Vice President – Federal Regulatory, AT&T Services, Inc. to Ms. Marlene Dortch, Secretary, Federal Communications Commission, WT Docket 13-193 (filed Mar. 12, 2014) (“AT&T March 12, 2014 Lifeline *Ex Parte*”).

⁴⁰⁴ See Joint Opposition at n.31.

⁴⁰⁵ See *id.*

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CONFIDENTIAL INFORMATION]⁴⁰⁶ Although AT&T has recently provided more information about the steps it plans to take to transition Leap’s customers, including Lifeline customers, we find the information on customer migration is still insufficient under our public interest review.

117. *Broadvox Access Charge Dispute.* Broadvox, a competitive local exchange carrier (“CLEC”),⁴⁰⁷ accuses AT&T, through its long distance affiliates, of placing undue pressure on other long distance providers by failing to pay invoices without filing timely or good faith disputes.⁴⁰⁸ Broadvox alleges that over a period of 20 months, it billed AT&T \$3,480,000, but AT&T paid only \$428,000 without identifying which charges it disputes.⁴⁰⁹ It has filed a complaint in federal court to collect the monies it believes are due.⁴¹⁰

118. Broadvox argues that AT&T will increase its penetration into the market for prepaid services by purchasing Leap and that prepaid wireless services compete directly with prepaid calling card services.⁴¹¹ Broadvox argues that the transaction will increase the flow of traffic originated by its own wireless customers to Broadvox, which will allegedly result in more access charges that AT&T will not pay.⁴¹² Broadvox asks the Commission to deny the applications because the transaction will allegedly “exacerbate what is already an untenable situation for Broadvox.”⁴¹³ In the alternative, Broadvox asks that the Commission place a series of conditions on the transaction that would require AT&T to make various filings and reports to the Commission, offer any settlement rates, terms, and conditions to any requesting carrier on a nondiscriminatory basis, and comply with the VoIP Symmetry Rule.⁴¹⁴

119. The Applicants respond that the issues Broadvox raises have no relationship to the transaction and involve parties other than Broadvox and AT&T.⁴¹⁵ The Applicants also contend that the issues should be litigated in other proceedings before the Commission and in federal court where these issues have already been raised.⁴¹⁶

120. We conclude that the issues raised by Broadvox and conditions proposed by Broadvox are not narrowly tailored to remedy any purported harms arising out of this transaction. Furthermore, we

⁴⁰⁶ See ATT-FCC-000036953.

⁴⁰⁷ Broadvox provides interstate and intrastate exchange access services, as well as local, long distance and enhanced services on both a retail and wholesale basis to communication service providers. See Broadvox Petition to Deny at 4. Broadvox serves its own local and long distance customers, but provides service to a wide variety of customers, including prepaid calling card providers. See *id.*

⁴⁰⁸ See Broadvox Petition to Deny at 6.

⁴⁰⁹ See *id.*

⁴¹⁰ See Broadvox Petition to Deny at 8.

⁴¹¹ See *id.* at 12-13.

⁴¹² See *id.* at 15.

⁴¹³ See *id.* at 15.

⁴¹⁴ See *id.* at 17-18. See also Letter from James C. Falvey, Esq., Counsel for Broadvox-CLEC, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 13-193, at 5 (filed Mar. 10, 2014).

⁴¹⁵ See Joint Opposition at 43.

⁴¹⁶ See *id.* at 43-44.

agree with the Applicants that the appropriate fora for resolving these issues are the proceedings before the Commission and in federal court where these issues have already been raised.

121. *Infrastructure Network Leases.* Infrastructure Networks, Inc. (Infrastructure) provides high speed data connectivity for users in critical infrastructure industries, including oil and natural gas exploration and production; water, oil and natural gas pipelines and wells; coal and ore mines; railroads, roads, inland waterways, vital bridges and tunnels; electric generation plants and distribution systems; and municipal traffic, utility and public service systems.⁴¹⁷ Infrastructure had entered into agreements with Cricket and STX to lease AWS-1 spectrum in Texas and Oklahoma.⁴¹⁸ The leases commenced July 22, 2013.⁴¹⁹ The leases contain provisions allowing the lease to be terminated upon six months' notice by either party.⁴²⁰ Infrastructure asked for assurances that AT&T would honor the leases, but AT&T refused to provide such assurances.⁴²¹

122. Infrastructure argues that if AT&T terminated the leases, "it would remove a competitor from this market and leave the critical infrastructure market dangerously underserved."⁴²² According to Infrastructure, allowing AT&T to acquire the spectrum would harm competition without any corresponding benefit.⁴²³ The Applicants describe the issue as a private contractual issue that the Commission should leave to the parties or courts of competent jurisdiction.⁴²⁴ Infrastructure responds that the energy industry has critical communications needs that implicate an important public interest.⁴²⁵ Infrastructure asks "that the Commission condition any grant of consent in this proceeding by requiring AT&T to honor rather than terminate the Leases for the duration of their term."⁴²⁶ TanMar Communications and Stallion Oilfield Services Ltd. ask the Commission to consider the need of critical infrastructure industries for virtual private radio networks in connection with this transaction.⁴²⁷

123. We decline to impose the condition requested by Infrastructure because it is inconsistent with Commission policy. Infrastructure freely negotiated a lease with Leap that allowed Leap to

⁴¹⁷ See Infrastructure Petition to Condition at 3.

⁴¹⁸ See Lease Nos. L000010651 (10 megahertz of AWS-1 spectrum in Fayette County, Texas and Beckham, Ellis, and Roger Mills counties in Oklahoma); L000010652 (10 megahertz of AWS spectrum in DeWitt, Gonzales, Karnes, Lavaca, and Wilson counties in Texas).

⁴¹⁹ See Lease Nos. L000010651, L000010652.

⁴²⁰ See Joint Opposition at 44; Infrastructure Reply at 5. There is a dispute between the parties as to whether the lease allows for termination if there is a transfer of control of Leap. Compare Infrastructure Petition to Condition at 3-4 and Joint Opposition at 44.

⁴²¹ See Infrastructure Petition to Condition at 4.

⁴²² *Id.* at 6.

⁴²³ See *id.* at 6.

⁴²⁴ See Joint Opposition at 45.

⁴²⁵ See Infrastructure Reply at 5-6. See also Letter from Ronald W. Del Sesto, Jr., Esq., counsel for Infrastructure Networks, Inc. to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (filed Feb. 3, 2014) at 2.

⁴²⁶ Infrastructure Reply at 8.

⁴²⁷ See Letter from Robert J. Ryan, Assistant Secretary, Stallion Oilfield Services Ltd. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193 (filed Feb. 18, 2014); Letter from Scott Leblanc, General Manager, TanMar Communications, L.L.C. to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193 (filed Feb. 6, 2014).

terminate the lease on six months' notice. In establishing its secondary markets rules and policies, the Commission recognized that parties would negotiate terms under which leases could be terminated, and held that so long as those terms complied with our rules and policies, "[w]e will not dictate the specific terms of such a provision."⁴²⁸ Here, Infrastructure is asking us to unilaterally eliminate a lease termination provision to which it voluntarily agreed. We agree with Applicants that such an action would be an inappropriate interference with a private contractual agreement. Furthermore, while we agree with Infrastructure that the energy industry has important communications needs, those needs do not justify the extraordinary remedy Infrastructure seeks.

124. *Leap Use of Huawei Equipment.* Youghioghny Communications states that Cricket has installed equipment manufactured by Chinese equipment manufacturer Huawei in south Texas and Chicago.⁴²⁹ It claims, "Congress has issued grave warnings about the security risks associated with using Huawei and ZTE equipment" and argues that AT&T must dismantle networks using Huawei equipment even before it transitions Cricket's customers off the CDMA network.⁴³⁰ Youghioghny Communications suggests that if AT&T does not voluntarily agree to dismantle the existing networks, the Commission should impose a condition similar to the condition imposed in the *Softbank-Sprint Order*.⁴³¹ Youghioghny Communications provides a newspaper article alleging a security breach in Cricket's network node in San Antonio.⁴³² Applicants respond that the proposed transaction would eliminate any concern about Huawei equipment because AT&T will decommission the existing Leap network.⁴³³ They also note that while Sprint was given two and a half years to replace Huawei and ZTE (another Chinese manufacturer) equipment, AT&T plans to decommission Leap's CDMA network in less time.⁴³⁴ Youghioghny Communications responds that the Applicants' response is insufficient and that they should be required to remove the Huawei equipment prior to closing.⁴³⁵

125. We decline to impose the condition requested by Youghioghny Communications. The requested remedy is not narrowly tailored to remedy any purported harms arising out of the proposed transaction. Indeed, the proposed transaction could remedy any potential harm by resulting in the decommissioning of that equipment. Further, Youghioghny Communications mischaracterizes the *SoftBank-Sprint Order*. In that order, the Commission noted that Executive Branch agencies had entered into a National Security Agreement with SoftBank, Sprint, and Clearwire pursuant to the CFIUS process,⁴³⁶ and that those agencies did not object to the grant of the FCC application. The Commission

⁴²⁸ See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503, 17565 ¶ 131 (2004).

⁴²⁹ See Youghioghny Communications Petition to Deny at 24.

⁴³⁰ Youghioghny Communications Petition to Deny at 24.

⁴³¹ See Youghioghny Communications Petition to Deny at 24.

⁴³² See Youghioghny Communications Reply at Exhibit A.

⁴³³ See Joint Opposition at n.150.

⁴³⁴ See Joint Opposition at n.150 (citing *SoftBank-Sprint Order*, 28 FCC Rcd at 9694-95 ¶ 127).

⁴³⁵ See Youghioghny Communications Reply at 5-7.

⁴³⁶ "CFIUS" is the Committee on Foreign Investment in the United States. CFIUS conducts national security reviews of mergers, acquisitions, and takeovers by, or with, any foreign person that could result in foreign control of a U.S. business (a "covered transaction"). Where a covered transaction presents national security risks, the Foreign Investment and National Security Act of 2007 ("FINSAs") provides statutory authority for CFIUS to enter into mitigation agreements with parties to the transaction or to impose conditions on the transaction to address such risks. (continued....)

found that any national security issues had been adequately addressed based on the record in that proceeding, and did not place any conditions on the transaction related to national security.⁴³⁷ Therefore, that case is not dispositive to the proposed transaction before us.

126. *Leap Patent Issue.* Youghioghney Communications raises concerns about AT&T's acquisition of a patent held by Leap for a business model patent on providing wireless communications services under an "all-you-can-eat" pricing scheme.⁴³⁸ Leap reports that it has sold the patent in question.⁴³⁹ In light of Leap's response, we consider Youghioghney Communications' concern moot because AT&T will not acquire the patent as a result of this transaction.

127. *Overcharging.* William Jay Fogal, an AT&T customer, argues that AT&T has been overcharging Go-Phone customers by charging customers for airtime that the customer was not in fact using.⁴⁴⁰ He provides a series of pictures showing that while calls were shown to be a certain length on his phone, he was billed for additional time by AT&T.⁴⁴¹ In the context of a complaint Mr. Fogal filed with the State of California, AT&T explained that a customer is billed beginning when the call is connected to the network, and the time shown on the phone does not reflect the time billed.⁴⁴² We decline to consider his complaints in the context of this transaction because the harms he complains of are not caused by the proposed transaction. We also note that Mr. Fogal has filed complaints with the State of California and the Commission⁴⁴³ raising the same issue, and we believe his issues were more appropriately considered in the context of those complaints.

128. *Flat Wireless Ownership Issue.* As described above, it appears that, for at least some time after closing, AT&T may hold an interest in Flat Wireless, another wireless telecommunications provider.⁴⁴⁴ Flat argues that AT&T would hold post-closing a very significant interest in Flat, one of its current competitors.⁴⁴⁵ AT&T responds that Leap's indirect ownership interest in Flat should have no effect on our review of the proposed transaction because the interest is a non-controlling, non-attributable minority interest.⁴⁴⁶

129. Based on our review of the Flat corporate documents, we are not convinced that the Applicants have sufficiently demonstrated that any interest AT&T may hold in Flat after closing should be disregarded for purposes of our competitive review. There appears to be at least a potential for AT&T

(Continued from previous page) _____

See Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons, 73 Fed. Reg. 70702, 70703 (Nov. 21, 2008) (*Merger Regulations Summary*). *See also* Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended, IB Docket No. 11-133, Second Report and Order, 28 FCC Rcd 5741, 5760-61 ¶ 33, n. 108-110 (2013).

⁴³⁷ *See SoftBank-Sprint Order*, 28 FCC Rcd at 9694-96 ¶¶ 127-131.

⁴³⁸ *See Youghioghney Communications Dec. 16, 2013 Ex Parte* at 3.

⁴³⁹ *See Leap Jan. 16, 2014 Ex Parte* at 1-2.

⁴⁴⁰ *See Comments and Complaint of William Jay Fogal* (filed Jan. 14 and 17, 2014).

⁴⁴¹ *See Comments and Complaint of William Jay Fogal* (filed Jan. 14 and 17, 2014).

⁴⁴² *See Letter from D. Michael Rodriguez, Office of the President, AT&T to State of California, Department of Justice* (filed Aug. 1, 2013).

⁴⁴³ *See File No. 13-C00464431*.

⁴⁴⁴ *See* ¶ 10 *supra*.

⁴⁴⁵ *See Flat Wireless, LLC, Jan. 6, 2014 Ex Parte* at 2.

⁴⁴⁶ *See Mar. 6, 2014 AT&T Fifth Supplemental Response* at 1-2.

to have the ability to influence Flat's affairs.

VI. POTENTIAL PUBLIC INTEREST BENEFITS

130. After assessing the potential competitive harms of the proposed transaction, we next consider whether the proposed transaction is likely to generate verifiable, transaction-specific public interest benefits that outweigh any identified competitive harms.⁴⁴⁷ As discussed below, we anticipate that the proposed transaction likely would facilitate certain transaction-specific public interest benefits, but not to the degree that we can conclude that these public interest benefits would likely outweigh the competitive concerns identified above. We reach our conclusion regarding public interest benefits recognizing that it is difficult for us to precisely quantify either the magnitude of or the time period in which these benefits would be realized.⁴⁴⁸

A. Analytical Framework

131. The Commission has recognized that “[e]fficiencies generated through a merger can mitigate competitive harms if such efficiencies enhance the merged firm’s ability and incentive to compete and therefore result in lower prices, improved quality of service, enhanced service or new products.”⁴⁴⁹ Under Commission precedent, the Applicants bear the burden of demonstrating that the potential public interest benefits of the proposed transaction outweigh the potential public interest harms.⁴⁵⁰

132. The Commission applies several criteria in deciding whether a claimed benefit should be considered and weighed against potential harms.⁴⁵¹ First, the claimed benefit must be transaction-specific.⁴⁵² Second, the claimed benefit must be verifiable.⁴⁵³ Because much of the information relating to the potential benefits of a transaction is in the sole possession of the applicants, they are required to provide sufficient evidence supporting each claimed benefit so that the Commission can verify its likelihood and magnitude. Third, the Commission has stated that it “will more likely find marginal cost

⁴⁴⁷ See, e.g., Applications of AT&T Inc. and Cellular South, Inc. For Consent To Assign Licenses Covering Parts of Alabama, Georgia, and Tennessee, *Memorandum Opinion and Order*, 28 FCC Rcd 12328, 12335 ¶ 16 (WTB 2013) (“*AT&T-CellSouth Order*”); *Alaska Wireless Order*, 28 FCC Rcd at 10467 ¶ 85; *SoftBank-Sprint Order*, 28 FCC Rcd at 9677-78 ¶ 91; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2341 ¶ 56; *AT&T-WCS Order*, 27 FCC Rcd at 16474 ¶ 40; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 95.

⁴⁴⁸ See, e.g., *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 91; *AT&T-WCS Order*, 27 FCC Rcd at 16474 ¶ 40; *AT&T-Qualcomm Order*, 26 FCC Rcd at 17623 ¶ 82.

⁴⁴⁹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 86; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 92; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 57; *AT&T-WCS Order*, 27 FCC Rcd at 16474-75 ¶ 41; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96.

⁴⁵⁰ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 86; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 92; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 57; *AT&T-WCS Order*, 27 FCC Rcd at 16474-75 ¶ 41; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 96.

⁴⁵¹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 58; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10734 ¶ 97.

⁴⁵² See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 58; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42.

⁴⁵³ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 58; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97.

reductions to be cognizable than reductions in fixed cost.”⁴⁵⁴ The Commission has justified this criterion on the ground that, in general, reductions in marginal cost are more likely to result in lower prices for consumers.⁴⁵⁵ In addition, “the magnitude of benefits must be calculated net of the cost of achieving them.”⁴⁵⁶ Further, benefits expected to occur only in the distant future may be discounted or dismissed because, among other things, predictions about the distant future are inherently more speculative than predictions that are expected to occur closer to the present.⁴⁵⁷ Finally, the Commission applies a “sliding scale approach” to evaluating benefit claims.⁴⁵⁸ Under this sliding scale approach, where potential harms appear “both substantial and likely, a demonstration of claimed benefits also must reveal a higher degree of magnitude and likelihood than we would otherwise demand.”⁴⁵⁹

B. Potential Benefits

133. The Applicants claim that the proposed transaction would benefit the customers of both companies.⁴⁶⁰ According to the Applicants, the proposed transaction will expand and improve the service offerings available under the Cricket brand and will enable the combined company to offer high-quality nationwide, facilities-based prepaid/no-contract services more effectively.⁴⁶¹ The Applicants assert that the proposed transaction would allow more efficient use of the Leap spectrum than was possible on the Leap network.⁴⁶² The Applicants claim that the proposed transaction will increase competition, improve customers’ network experience, improve spectral efficiency, reduce costs and increase savings, and help Leap customers migrate onto AT&T’s superior wireless network.

134. *Increased Competition.* The Applicants argue that the proposed transaction will expand and improve the service offerings available under the Cricket brand, which will put added competitive pressure on T-Mobile, Sprint and other providers.⁴⁶³ AT&T intends to use the Cricket brand

⁴⁵⁴ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90.

⁴⁵⁵ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90.

⁴⁵⁶ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 58; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97.

⁴⁵⁷ See, e.g., *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90.

⁴⁵⁸ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 59; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98.

⁴⁵⁹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 88; *SoftBank-Sprint Order*, 28 FCC Rcd at 9678-79 ¶ 93; *T-Mobile-MetroPCS Order*, 28 FCC Rcd at 2342 ¶ 59; *AT&T-WCS Order*, 27 FCC Rcd at 16475 ¶ 42; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 98; cf. *2010 DOJ/FTC Horizontal Merger Guidelines* at § 10, p. 31 (“The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive.”).

⁴⁶⁰ See Public Interest Statement at 8.

⁴⁶¹ See Public Interest Statement at 7.

⁴⁶² See Public Interest Statement at 16.

⁴⁶³ See Public Interest Statement at 7.

and expand the availability of the Cricket service offerings nationwide,⁴⁶⁴ and it argues that the benefits of this transaction will be available to all consumers, including low-income and minority consumers.⁴⁶⁵ The Applicants contend that AT&T's nationwide 4G LTE/HSPA+ network, its superior range of devices⁴⁶⁶ and broader array of services, and its greater financial resources make it possible to compete more effectively against T-Mobile/MetroPCS, Sprint (including its Boost Mobile and Virgin Mobile USA brands), Verizon Wireless, and TracFone/Straight Talk, among others.⁴⁶⁷ The Applicants argue that competition to attract value-conscious customers to prepaid/no-contract services is intensifying.⁴⁶⁸ Specifically, they argue that T-Mobile has heightened its business focus on lower-cost, no-contract service and is expanding the MetroPCS brand;⁴⁶⁹ while Sprint has bolstered its financial and operational position from its recent acquisition by SoftBank, and its acquisition of Clearwire spectrum will enable it to expand its successful Boost and Virgin Mobile brands.⁴⁷⁰ Meanwhile, according to the Applicants, Leap faces significant challenges in competing effectively against the LTE service offerings of the nationwide wireless carriers.⁴⁷¹

135. According to the Applicants, existing Leap customers will benefit from a more robust national network and a broader array of services.⁴⁷² AT&T asserts that, after merger close, it will honor the existing plan of each Leap customer, provided that the customer does not suspend or terminate his or her service for that plan, or choose to upgrade to a device or plan that is not comparable to his or her current device or plan.⁴⁷³ AT&T also claims that the combined company will continue to offer competitive rate plans that appeal to value-conscious customers, including the option of choosing low-cost devices and services.⁴⁷⁴ Leap has deployed LTE technology in only 11 metropolitan areas covering approximately 21 million people.⁴⁷⁵

136. The Applicants argue that by combining Leap's established Cricket brand with AT&T's nationwide 4G LTE/HSPA+ network, the combined company will bring consumers a higher quality, more robust, competitive prepaid offering.⁴⁷⁶ AT&T recently launched a new standalone prepaid brand called "Aio Wireless," with a separate distribution network (which still needs to be built); this plan is aimed at customers seeking low-cost service options.⁴⁷⁷ It is available in seven metropolitan areas in

⁴⁶⁴ See Public Interest Statement at 8; Joint Opposition at 4.

⁴⁶⁵ See Joint Opposition at 5-6.

⁴⁶⁶ AT&T claims that it will offer Leap customers the iPhone 5, the Samsung Galaxy Express, the Nokia Lumia 620, and other smartphones and feature phones from which they can choose. See Joint Opposition at 8.

⁴⁶⁷ See Public Interest Statement at 8-9.

⁴⁶⁸ See Public Interest Statement at 5.

⁴⁶⁹ See Public Interest Statement at 6.

⁴⁷⁰ See Public Interest Statement at 6-7.

⁴⁷¹ See Public Interest Statement at 7.

⁴⁷² See Public Interest Statement at 9; Joint Opposition at 4-5.

⁴⁷³ See Aug. 20, 2013 Applicants Supplemental Response at 2.

⁴⁷⁴ See Public Interest Statement at 9.

⁴⁷⁵ See Public Interest Statement at 11; Joint Opposition at 19.

⁴⁷⁶ See Public Interest Statement at 12-13; Joint Opposition at 11.

⁴⁷⁷ Public Interest Statement at 12.

Florida and Texas.⁴⁷⁸ It is also available nationwide through online ordering.⁴⁷⁹

137. *Improved Network Experience.* The Applicants argue that customers of both companies (particularly those of Leap) will benefit from an enhanced and expanded network.⁴⁸⁰ According to the Applicants, Leap customers will enjoy access to AT&T's nationwide network, rather than relying on third-party networks,⁴⁸¹ and Leap customers will gain access to a broader and more robust LTE network.⁴⁸² Leap holds unused AWS-1 and PCS spectrum covering about 41 million people.⁴⁸³ The Applicants argue that AT&T will use this spectrum, incorporating it into, and increasing the capacity of, its LTE network.⁴⁸⁴ AT&T already is deploying AWS-1 spectrum in its LTE network and represents that it will begin deploying LTE service over PCS spectrum by the end of 2013.⁴⁸⁵ In areas where AT&T currently anticipates it will already be utilizing AWS-1 spectrum for LTE service at the time of closing, AT&T preliminarily has determined that it will be able to deploy Leap's unused, contiguous AWS-1 spectrum in as little as 60 or 90 days (this includes approximately 50 CMAs).⁴⁸⁶ It has twice revised that list based on "based on additional spectrum utilization information received from Leap, adjustments to AT&T's LTE deployment, and further analysis by AT&T's network integration team."⁴⁸⁷ AT&T admits that the list is subject to change because its integration planning is still ongoing.⁴⁸⁸ AT&T estimates that it will be able to deploy the unused, contiguous Leap spectrum in many additional areas with 12 months after the close of this transaction (this would include over 160 CMAs).⁴⁸⁹ This list is still preliminary and is subject to change as it performs further integration planning.⁴⁹⁰ AT&T also expresses its intention to ultimately deploy all of Leap's PCS spectrum for LTE, but the timing of that deployment is dependent on a variety of factors, including "the pace at which Leap customers transition to AT&T's network, the amount of spectrum available, whether that spectrum is contiguous to AT&T spectrum, the amount of future traffic on AT&T's and Leap's networks, and AT&T's plans for deploying additional spectrum in a CMA."⁴⁹¹ The Applicants also argue that Leap's south Texas customers will benefit from the transaction

⁴⁷⁸ See Public Interest Statement at 12.

⁴⁷⁹ See Aio Wireless Online Goes Live, Also Expands Retail Presence with New Stores in Dallas, (Sep. 12, 2013), available at <http://www.att.com/gen/press-room?pid=24789&cdvn=news&newsarticleid=36988&mapcode=consumer|mk-retail> (last visited Feb. 20, 2014).

⁴⁸⁰ See Public Interest Statement at 17.

⁴⁸¹ See Public Interest Statement at 17-18.

⁴⁸² See Public Interest Statement at 18.

⁴⁸³ See Public Interest Statement at 14.

⁴⁸⁴ See Public Interest Statement at 14.

⁴⁸⁵ See Public Interest Statement at 14-15; Aug. 20, 2013 Applicants Supplemental Response at 5.

⁴⁸⁶ See Public Interest Statement at 15; Aug. 20, 2013 Applicants Supplemental Response at 5; Nov. 22, 2013 AT&T Initial Response, Exhibit 11.b.1.

⁴⁸⁷ AT&T February 7 Letter at 1. The original list of markets to be built out was filed with the Aug. 20, 2013 Applicants Supplemental Response. The first revision of that list was filed in the Nov. 22, 2013 AT&T Initial Response at Exhibit 11.b.1.

⁴⁸⁸ AT&T February 7 Letter at 1.

⁴⁸⁹ See Public Interest Statement at 15; Aug. 20, 2013 Applicants Supplemental Response at 5; Nov. 22, 2013 AT&T Initial Response, Exhibit 11.c.

⁴⁹⁰ See Nov. 22, 2013 AT&T Initial Response at 25.

as well because Leap's limited LTE network is less spectrally efficient, supports lower throughput speeds and is deployed to far fewer areas than AT&T's 4G LTE network.⁴⁹²

138. Mr. Smith argues that, while it may be true that the proposed transaction would grant Leap customers access to AT&T's broader network, it would come at a higher price; the reason that regional carriers like Leap provide cheaper service without long-term contracts is because their networks are not as extensive or fast as the national carriers.⁴⁹³ Mr. Smith argues that regional carriers provide a cheaper, albeit slower and less extensive, choice for consumers who either do not want or cannot afford the high costs and commitment demanded by large carriers with national networks.⁴⁹⁴ Youghioghny Communications argues that Cricket already provides 4G LTE in south Texas, rendering an AT&T roll-out unnecessary, and that Cricket's voice, 3G, and 4G coverage area in south Texas is superior to those of AT&T and the larger carriers, so no benefit will be gained by Leap customers' access to AT&T's footprint.⁴⁹⁵ Mr. Smith claims that if this transaction is allowed to proceed, he and other consumers who previously sought low-cost alternatives will be left in need of affordable and reliable wireless service.⁴⁹⁶

139. *Improved Spectral Efficiency.* The Applicants contend that Leap is currently using only about 42 percent of its spectrum in its facilities-based service markets (an area covering 96 million people).⁴⁹⁷ The Applicants argue that the transaction will allow more efficient use of the Leap spectrum, which was primarily deployed to support CDMA EVDO technology. AT&T typically deploys spectrum to support LTE in 10x10 MHz blocks, with 5x5 configurations as a minimum.⁴⁹⁸ Even where Leap has deployed LTE, it has done so in less spectrally efficient narrow-bandwidth deployments (mainly 3x3 MHz and no larger than 5x5 MHz).⁴⁹⁹ AT&T claims that it will be able to refarm Leap spectrum even before the full customer migration, and the remaining spectrum will be available for redeployment after AT&T completes the migration of Leap customers to AT&T's networks, which is expected within 18 months of closing.⁵⁰⁰ In many areas, the additional Leap spectrum will allow AT&T to deploy LTE services in larger contiguous 10x10 MHz (or greater) blocks where it currently has none or a current 5x5 deployment.⁵⁰¹

140. AT&T claims that it will also be able to productively integrate a few thousand complementary Leap cell sites into its network.⁵⁰² The integration will create a denser network grid that will increase network capacity and improve network performance.⁵⁰³

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⁴⁹¹ Nov. 22, 2013 AT&T Initial Response at 27.

⁴⁹² See Joint Opposition at 8 n.29.

⁴⁹³ See Smith Petition to Deny at 9.

⁴⁹⁴ See Smith Petition to Deny at 9; Smith Reply at 10.

⁴⁹⁵ See Youghioghny Communications Petition to Deny at 28.

⁴⁹⁶ See Smith Petition to Deny at 9; Smith Reply at 9.

⁴⁹⁷ See Public Interest Statement at 14.

⁴⁹⁸ See Public Interest Statement at 16; Aug. 20, 2013 Applicants Supplemental Response at 5.

⁴⁹⁹ See Public Interest Statement at 11.

⁵⁰⁰ See Public Interest Statement at 16.

⁵⁰¹ See Public Interest Statement at 16-17.

⁵⁰² See Public Interest Statement at 17; Aug. 20, 2013 Applicants Supplemental Response at 4.

⁵⁰³ See Public Interest Statement at 17.

141. Mr. Smith questions the Applicants' claims of improved efficiency, asserting that AT&T does not explain how eliminating a competitor would increase choices or efficiency because it is axiomatic that market concentration tends to decrease consumer choices and reduce incentives to put resources to efficient use.⁵⁰⁴ Youghioghney Communications contends that AT&T already has "vast stores" of unused spectrum that it has not put to better use.⁵⁰⁵

142. *Additional Cost Savings.* The Applicants claim that as Leap's cell sites are integrated into AT&T's network and other sites decommissioned without affecting network performance, AT&T can eliminate lease, utility, maintenance, and other site-related expenses.⁵⁰⁶ Additional savings will result from optimization of the distribution network and through efficiencies in advertising, marketing, customer support, equipment, and general and administrative costs (such as call center and billing operations). There will allegedly be additional cost savings from removing redundancy in corporate and overhead functions.⁵⁰⁷ Roaming and resale expenses that Leap would have paid as a standalone company will be substantially reduced, which will lead to lower prices for consumers than would prevail absent such cost savings.⁵⁰⁸ Additionally, backhaul costs are among the sources of marginal cost savings that will result from the transaction.⁵⁰⁹

143. Youghioghney Communications argues that AT&T's cost savings would be offset by additional expenses associated with dismantling Leap's CDMA network. Youghioghney Communications argues that if AT&T offers free phones to soften the hit that Leap's millions of customers are going to take, the cost-savings benefits touted by the Applicants may have to be offset against the enormous cost burden of providing free phones to millions of customers.⁵¹⁰ Youghioghney Communications also argues that the Applicants do not address the cost and serious complications of having to dismantle and replace entire regional CDMA networks in Chicago and south Texas due to national security concerns about Chinese manufacturer Huawei.⁵¹¹ It contends that the loss of Cricket will limit roaming availability and increase roaming costs for customers.⁵¹² Mr. Smith argues that this transaction will force Cricket's existing customers to purchase new equipment that is compatible with AT&T's network.⁵¹³

C. Discussion

144. We have reviewed the claims of the Applicants regarding the benefits they allege would result from the proposed transaction, as well as their responses to our requests for additional information and documents. The record provides general support for the Applicants' contentions that the proposed transaction would result in some public interest benefits, including for Leap and AT&T

⁵⁰⁴ See Smith Petition to Deny at 11.

⁵⁰⁵ Youghioghney Communications Reply at 14.

⁵⁰⁶ See Public Interest Statement at 19.

⁵⁰⁷ See Public Interest Statement at 19.

⁵⁰⁸ See Public Interest Statement at 19-20.

⁵⁰⁹ See Public Interest Statement at 20.

⁵¹⁰ See Youghioghney Communications Petition to Deny at 23.

⁵¹¹ See Youghioghney Communications Petition to Deny at 24; Youghioghney Communications Reply at 5. See also ¶¶ 124-25 *supra*.

⁵¹² See Youghioghney Communications Reply at 11-12.

⁵¹³ See Smith Reply at 10.

customers. As discussed below, however, given the burden placed on the Applicants, particularly to make a verifiable showing of the likelihood and magnitude of the claimed benefits, we find that the current showings are not sufficient by themselves to outweigh the potential for competitive harms we have found with respect to the proposed transaction.

145. *Competition.* We place limited weight on the Applicants' claims that the proposed transaction would, overall, lead to increased competition. For the reasons discussed earlier, we have found potential for competitive harm. In particular, we note that, while AT&T asserts that it will use the Cricket brand to compete more aggressively for prepaid customers, AT&T's incentives to compete appear to be reduced with the elimination of Leap as an independent competitor. Furthermore, AT&T's efforts to compete for prepaid customers to date have been very recent and limited in scope. As a result, we can place only limited weight on AT&T's claims that it will aggressively compete for prepaid customers.

146. *Enhanced network experience.* Based on the current record, we are largely unable to verify AT&T's claims that the proposed transaction would lead to the enhancement of its provision of LTE services to consumers, in particular Leap customers. AT&T has discussed using Leap's spectrum to build out LTE service in various CMAs in 60-90 days and other CMAs within 12 months. AT&T's current showings do not allow us to place significant weight on such claims. For instance, while AT&T has attempted to identify specific markets for such buildout, AT&T has submitted three successive filings listing different CMAs that it plans to build out in 60-90 days, and it admits that even the most current list is subject to revision as it learns more about Leap's operations and continues its integration planning. Given the considerable uncertainty regarding AT&T's plans, it is difficult to verify their claims, and we therefore cannot place significant weight on this claimed benefit.

147. We also cannot place any weight on AT&T's suggestion that it will ultimately use all of Leap's PCS spectrum for LTE. AT&T admits that the timing of any such additional deployment is contingent on a number of factors, including the pace at which Leap customers transition to AT&T's network, the amount of spectrum available, and whether that spectrum is contiguous.⁵¹⁴ AT&T only states that it will "ultimately" use all of Leap's PCS spectrum for LTE.⁵¹⁵ In the absence of any specific time commitment from AT&T on that point, and given the contingencies that must be met before AT&T can deploy, we find that any claimed benefit is too speculative and distant in time to be credited.

148. Another issue with AT&T's claim of public interest benefits for Leap customers resulting from use of a superior AT&T network is that AT&T itself estimates that many Leap customers will not receive that benefit. AT&T has estimated that it will transition **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of Leap customers onto its network.⁵¹⁶ We cannot fully credit the Applicants with providing an improved network experience to Leap's customers if **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** of Leap customers never transition to AT&T's network. The disruption to Leap customers who will lose their current service and be forced to arrange for alternative service will reduce any net benefit resulting from some Leap and AT&T customers receiving an enhanced network experience from AT&T.

149. *Improved spectral efficiency.* Based on the record before us, we find that AT&T's acquisition of Leap's spectrum would likely result in improved spectral efficiency in certain markets, and therefore should create some transaction-specific benefits. We find, however, that the benefits are not as substantial as claimed by the Applicants.

⁵¹⁴ See Nov. 22, 2013 AT&T Initial Response at 27.

⁵¹⁵ See Nov. 22, 2013 AT&T Initial Information Response Request at 27.

⁵¹⁶ ATT-FCC-000034583 at 9 (Oct. 2, 2013).

150. While the parties claim that Leap utilizes 42 percent of its spectrum, providing significant potential benefits from utilization of the unused Leap spectrum, it appears from the record that Leap uses considerably more than 42 percent of its spectrum. The 42 percent figure combines both PCS and AWS-1 spectrum and was derived by evaluating usage as a function of MHz-POPs on a market-by-market basis. We see at least two issues with the Applicants' study. First, in order to properly evaluate spectrum utilization, the PCS and AWS-1 bands should be evaluated separately. Our review of the available data shows that Leap uses its PCS spectrum more intensively than its AWS-1 spectrum. Second, the study offered by the Applicants fails to account for site-specific allocated bandwidth and the site's corresponding population coverage as a measure of frequency use. Leap's analysis⁵¹⁷ does not use a site-dependent approach that considers each site's utilized bandwidth and the site's covered population.⁵¹⁸ Instead the analysis aggregates unused bandwidth over the entire network, without any weighting of bandwidth by population, resulting in the Applicants underestimating spectrum utilization. It appears that, measured in terms of MHz-POPs, Leap's use of its PCS and AWS-1 spectrum considerably exceeds 42 percent. To the extent the Applicants argue that AT&T will use spectrum more intensively and efficiently than Leap, we conclude that the claimed benefit is not as great as claimed by the Applicants because they underestimate Leap's current spectrum utilization.

151. We also find that AT&T's claimed spectral efficiency benefits are of limited significance because, in the majority of the CMAs in question, the amount of Leap spectrum available will only allow AT&T to add a 5X5 megahertz channel, which is the minimum configuration used by AT&T for LTE. We do not find the addition of a 5X5 megahertz channel as a meaningful demonstration of spectral efficiency,⁵¹⁹ particularly when the Applicants themselves describe a 5X5 megahertz channel as relatively inefficient.⁵¹⁹

152. *Additional cost savings.* Our analysis of the cost savings that the Applicants contend the proposed transaction would yield indicates that, although notable, they mostly are due to reductions in fixed costs.⁵²⁰ We generally find that reductions in fixed cost are less cognizable than reductions in marginal costs because the former are less likely to result in lower prices for consumers,⁵²¹ making it difficult here to quantify the magnitude of these asserted benefits. We must also take into account additional costs AT&T will incur as it migrates customers and integrates Leap's spectrum into its network.

153. Our evaluation of the claimed public interest benefits gives limited weight to many of the benefits presented that would go to Leap's customers as a result of the proposed transaction, such as a higher-quality, more robust, and competitive prepaid offering, expanded network capacity, and savings in

⁵¹⁷ LEAP-FCCEXH-00006592.

⁵¹⁸ A site-dependent approach multiplies each site's used bandwidth by the site's covered population, thus weighting the different utilization characteristics commonly found between core sites and fringe area sites by population.

⁵¹⁹ See Public Interest Statement at iii ("AT&T's 4G deployments are far more efficient and offer customers higher throughput speeds than Leap's 3G EVDO and limited narrow-bandwidth LTE deployments."); Aug. 20, 2013 Applicants Supplemental Response at 4 (Leap's LTE deployments are no larger than 5x5 megahertz).

⁵²⁰ ATT-FCC-000033728 (Jul. 11, 2013), [BEGIN HIGHLY CONFIDENTIAL INFORMATION]

[END HIGHLY CONFIDENTIAL INFORMATION].

⁵²¹ See, e.g., *Alaska Wireless Order*, 28 FCC Rcd at 10468 ¶ 87; *Verizon Wireless-SpectrumCo Order*, 27 FCC Rcd at 10735 ¶ 97; *AT&T-Centennial Order*, 24 FCC Rcd at 13954 ¶ 90.

network and operating costs.⁵²² These asserted benefits are available to Leap customers in locations where AT&T is already offering these services as a competitor to Leap.

154. *Conclusion.* We find, based on the record before us and the Applicants' claims as discussed above, that certain public interest benefits may potentially result from the proposed transaction. Using the sliding-scale approach, however, we are unable on the basis of this record to conclude that these public interest benefits are sufficiently large enough to outweigh the potential public interest harms we have identified in certain individual markets.

VII. REMEDIES

A. Introduction

155. The review of a proposed transaction entails a thorough examination of the potential public interest harms and any verifiable, transaction-specific benefits, including any voluntary commitments made by the Applicants to further the public interest. As part of this process, we may impose additional remedial conditions to address potential harms likely to result from the proposed transaction or to help ensure the realization of any promised potential benefits.

156. As described above, under our sliding-scale approach we cannot conclude based on this record that the potential benefits are sufficiently large, specific, and imminent to outweigh these potential harms. We find that the transaction as proposed has the potential to cause some competitive and other public interest harms in several local markets, as well as to value-conscious consumers generally. Moreover, although we find some potential public interest benefits likely to arise from the transaction in terms of spectral efficiency, these potential benefits by themselves are insufficient to outweigh the potential harms.

157. In recent filings supplementing the record on some key issues, however, AT&T has made several voluntary commitments, which as explained below allow us to find that the proposed transaction overall would be in the public interest.⁵²³ AT&T has agreed to file quarterly reports detailing its progress in complying with these voluntary commitments. Those commitments include spectrum divestitures in certain markets, where we have found the potential for spectrum aggregation to lead to anticompetitive harm. These divestitures will help ensure that AT&T's competitors have access to sufficient spectrum in those markets. AT&T also is committing to deploy LTE service using unused Leap spectrum within 90 days or 12 months of closing, including some markets in south Texas. This deployment will ensure that this spectrum will not lie fallow and will help to ensure that consumers in current Leap service areas will benefit from network improvements to AT&T's advanced 4G network technologies. AT&T also will build out LTE service on its network in 70 percent or 80 percent of the geographic area in specific markets in south Texas within 18 months of closing. This will ensure that consumers in those markets have access to advanced 4G LTE services.

158. In addition, AT&T will be offering certain rate plans targeted to help value-conscious and Lifeline customers, which will provide additional assurance that AT&T will compete vigorously for value-conscious customers and will be attractive to Leap customers who may wish to migrate to AT&T's network. To deal with issues affecting Leap prepaid customers wanting to migrate onto AT&T's GSM-based network, AT&T will be offering a device trade-in credit program and a feature phone device trade-in program to certain groups of Leap customers prior to discontinuing CDMA service in a particular area. These commitments will help ensure that Leap customers have future access to wireless service and will

⁵²² See Joint Opposition at 2-3.

⁵²³ See Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T, to Roger C. Sherman, Acting Chief, Wireless Telecommunications Bureau, WT Docket No. 13-193 (filed Mar. 6, 2014) (“AT&T Commitment Letter”).

facilitate the migration of Leap's customers to the AT&T network. To address the CDMA roaming issues discussed above, AT&T is committing to honor the rates, terms and conditions of the CDMA roaming agreements that AT&T is assuming from Leap, and to offer CDMA voice and data roaming consistent with applicable Commission roaming rules for so long as AT&T operates Leap's CDMA network. This should facilitate the provision of roaming services during the network transition. Finally, on the Flat Wireless issues, AT&T is committing that, to the extent the AT&T/Leap transaction is consummated prior to Cricket's sale of its interest in Flat, it will use reasonable best efforts to cause Cricket to sell its interest in Flat as soon as practicable thereafter and will take certain steps detailed below in the meantime to ensure that AT&T does not participate in the affairs of a competitor.

159. As discussed in detail below, we find that in light of these commitments, which become conditions to our approval, the public interest benefits of the proposed transaction outweigh the likelihood of significant public interest harms, such that overall, the proposed transaction is in the public interest. For example, we note that the commitments providing for spectrum divestitures, the deployment of unused spectrum, the build out of LTE service, rate plans, and customer migration will all apply to the south Texas markets that are of particular concern. They will ameliorate the potential harms and ensure public interest benefits in those markets by, among other things, ensuring that AT&T has every incentive to provide higher quality service, and minimizing customer dislocations that might result from the proposed transaction.

160. We also find that each of the commitments AT&T has made is necessary in order to address potential harms from the proposed transaction.⁵²⁴ Without these commitments, we would be unable to conclude that the benefits of the transaction outweigh the harms. We therefore impose each of the commitments made by AT&T as conditions of our consent to the proposed transaction.

B. Spectrum Divestitures

161. *Record.* We have found above that the proposed transaction would be likely to cause significant competitive harm as a result of spectrum aggregation in a number of geographic markets. Specifically, we have concluded that, in those markets, there is a significant potential that AT&T would have the ability to foreclose or significantly raise rivals' costs.

162. AT&T has made a commitment that, within 6 months of the transaction closing, AT&T will file applications with the Commission to assign or transfer control of the amounts of spectrum ("Divestiture Assets") in the geographic areas identified in Attachment B.⁵²⁵ AT&T reserves the right, upon notice to the Bureau, to change the specific type of spectrum to be divested in any geographic area based on further analysis performed after the merger's close.⁵²⁶ Upon application by the Applicants to the Bureau, the Bureau may grant one or more extensions not to exceed 60 days in the aggregate to allow the Applicants further time to dispose of the Divestiture Assets.⁵²⁷ To the extent the Applications are not

⁵²⁴ Regarding Youghioghny Communications' argument on procedural unfairness in considering AT&T's commitments, we note that we have fully analyzed the public interest harms associated with this transaction, including those alleged by Youghioghny Communications, and find that the conditions that we impose are sufficient to address the potential harms arising out of this transaction. See Letter from Donald J. Evans, Counsel for Youghioghny Communications, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket 13-193, at 1-2 (Mar. 10, 2014) ("Youghioghny Communications Mar. 10, 2014 *Ex Parte*"); Youghioghny Communications Mar. 10, 2014 Clyburn Office *Ex Parte* at 1.

⁵²⁵ See AT&T Commitment Letter, Attachment A (list of commitments) at 3, Attachment B (list of divestiture markets). A list of the markets where AT&T will make spectrum divestitures is also included in Appendix D.

⁵²⁶ See AT&T Commitment Letter, Attachment A at 3.

⁵²⁷ See AT&T Commitment Letter, Attachment A at 3.

filed by the relevant date, or by any extended date allowed by the Bureau, the Commission may require AT&T to surrender the designated spectrum.⁵²⁸

163. *Discussion.* We conclude generally that these spectrum divestitures will adequately prevent AT&T from foreclosing competing service providers in those markets based on undue spectrum aggregation. With respect to Youghioghny Communications' request to require divestiture in south Texas, we have carefully reviewed each of those markets and find that the spectrum divestitures offered by AT&T will mitigate competitive harm.

C. Spectrum Deployment Commitments

164. *Record.* AT&T has agreed that within 30 days after it closes the transaction, it will provide the Commission with a list of the markets where it anticipates it will begin deploying Leap's unused contiguous AWS-1 spectrum for LTE service within 90 days of merger close, and where it anticipates it will begin deploying Leap's unused AWS-1 or PCS spectrum for LTE service within 12 months of closing.⁵²⁹ AT&T commits to provide detailed quarterly reports outlining its progress toward completing these deployments.⁵³⁰

165. *Discussion.* We find that these commitments will lead to public interest benefits regarding access to advanced broadband technologies by consumers in these service areas, including customers of both AT&T and Leap, and ensuring the use of spectrum that is currently unused. AT&T's commitments outlined above will help to ensure that all consumers in the current Leap service areas will benefit from the deployment of advanced 4G network technologies.

D. LTE Network Deployment in South Texas

166. *Record.* Within 12 months of the transaction's closing, AT&T will deploy LTE service sufficient to provide coverage to 90 percent of the geographic area in 2 CMAs in south Texas: Corpus Christi, TX (CMA 112), and McAllen-Edinburg-Mission, TX (CMA 128).⁵³¹ Within 12 months of the merger's closing, AT&T will deploy LTE service sufficient to provide coverage to 50 percent of the geographic area in: Laredo, TX (CMA 281), Texas 19 - Atascosa (CMA 670), and Texas 20 - Wilson (CMA 671), and to 40 percent of the geographic area in Texas 18 - Edwards (CMA 669).⁵³² Further, within 18 months of the transaction's closing, AT&T will deploy LTE service sufficient to provide coverage to 80 percent of the area in: Laredo, Texas 19, and Texas 20.⁵³³ Finally, within 18 months of the transaction's closing, AT&T will deploy LTE service sufficient to provide coverage to 70 percent of the area in Texas 18.⁵³⁴ These LTE deployment commitments are dependent upon AT&T's ability to secure zoning and permitting for new equipment and to acquire or supplement high speed backhaul transport as required for new sites as a predicate to deploying LTE in AT&T's network.⁵³⁵

167. We find that these commitments will lead to significant public interest benefits

⁵²⁸ See AT&T Commitment Letter, Attachment A at 3.

⁵²⁹ See AT&T Commitment Letter, Attachment A at 4.

⁵³⁰ See AT&T Commitment Letter, Attachment A at 4. See also section VII.I. *infra*.

⁵³¹ See AT&T Commitment Letter, Attachment A at 3.

⁵³² See AT&T Commitment Letter, Attachment A at 3.

⁵³³ See AT&T Commitment Letter, Attachment A at 3.

⁵³⁴ See AT&T Commitment Letter, Attachment A at 3.

⁵³⁵ See AT&T Commitment Letter, Attachment A at 3.

regarding access to advanced broadband technologies by consumers in these south Texas markets, including customers of both AT&T and Leap. We find these commitments to be particularly significant in light of the potential competitive harms we have identified in those markets. AT&T's commitments also will help ensure that all consumers in these south Texas markets will benefit from the deployment of advanced 4G network technologies.

E. Rate Plan Commitments

168. *Record.* Public Knowledge asks the Commission to require AT&T to: (1) continue offering the same prepaid service as Leap, with the same rates, terms and conditions, for a minimum of four years for existing Leap customers and two years for new prepaid customers; (2) allow existing Leap customers, for a minimum of four years, to upgrade their plans or devices without losing the terms and conditions currently available to them; (3) not throttle its prepaid customers when they are using their guaranteed "Full-Speed Data"; and (4) make the same handsets available to its prepaid customers that it does to its postpaid customers.⁵³⁶ James Jones, a Cricket customer, argues that there should be no loss of service capacity for voice or data for Cricket CDMA only devices, and an equal or better level of service when Cricket's customers transitioned to AT&T's network.⁵³⁷ He also asks that there be no increase in prices for Cricket's existing plans and that there be no loss of special pricing plans and discounts.⁵³⁸ Finally, Mr. Jones argues that AT&T's activation fee be limited to the fees Cricket has customarily charged its customers and that AT&T unlock replacement devices.⁵³⁹

169. AT&T has committed, for all customers who maintain their existing Leap rate plan during the transition period (including Lifeline customers), that it will honor those existing rates (and for Lifeline customers, the corresponding discounts) until the earlier of such time as the customer voluntarily upgrades his or her device, chooses another rate plan, migrates to the New Cricket platform, or until sunset of the CDMA network, which AT&T anticipates will happen between 12 to 18 months from closing, depending on the market.⁵⁴⁰ This commitment will remain in effect even where AT&T elects to relinquish Leap's ETC designation.⁵⁴¹

170. There also are a series of rate plans that AT&T has committed to providing to new and transitioning customers upon merger close. For 18 months following the merger's close, AT&T will make available a nationwide pre-paid rate plan for feature phones that includes unlimited talk (local and long distance), text, and data, in accordance with published speed policies, and no roaming charges, at a rate that will not exceed \$40/month (including all taxes and fees).⁵⁴² AT&T currently plans that the \$40/month rate plan will include unlimited text/picture/video messaging, unlimited data with a 500 MB high-speed data allowance with lower speeds for additional usage, voicemail, call waiting, and call

⁵³⁶ See Public Knowledge Petition to Deny at 19.

⁵³⁷ See Informal Comments of James Jones at 1 (filed Feb. 4, 2014) (Jones Comments).

⁵³⁸ See Jones Comments at 2.

⁵³⁹ See Jones Comments at 2.

⁵⁴⁰ See Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 13-193 at 1-2 (filed Mar. 12, 2014) ("AT&T March 12, 2014 Clyburn *Ex Parte*").

⁵⁴¹ See March 12, 2014 AT&T Clyburn *Ex Parte* at 2.

⁵⁴² See AT&T Commitment Letter, Attachment A at 3. See also Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 13-193 at 1 (filed Mar. 11, 2014) ("March 11, 2014 AT&T *Ex Parte*"); Joint Opposition at 7.

forwarding.⁵⁴³ In CMAs in which Leap currently has a facilities-based CDMA network, AT&T will, for a period of at least 12 months after the merger's closing, offer at least one prepaid rate plan priced below the \$40 rate plan referenced in AT&T's Commitment Letter.⁵⁴⁴ That rate plan, which will include unlimited voice and text and a price that includes all taxes and fees, is specifically designed to appeal to value-conscious and Lifeline-eligible consumers.⁵⁴⁵ Exhibit 15.32 compares the existing Cricket rate plans and rate plans that AT&T currently proposes that the New Cricket will offer at launch, including the plan described below.⁵⁴⁶ **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

[END HIGHLY CONFIDENTIAL INFORMATION].⁵⁴⁷

171. *Discussion.* We conclude that these rate plan commitments will provide public interest benefits to both AT&T and Leap customers, including Lifeline customers. As noted above, we expressed concern that the elimination of Leap as a competitor would mean AT&T would have a reduced incentive to compete. AT&T's commitment to honor the existing rate plans of Leap customers (including, importantly, the discounts that Leap Lifeline customers receive) so long as Leap's CDMA network is running and the customer does not make voluntary changes to their service will help protect those customers during the network transition. AT&T's other rate plan commitments will provide additional assurance that AT&T will compete vigorously for value-conscious customers and will be attractive to Leap customers who may wish to migrate to AT&T's network. The **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]** **[END HIGHLY CONFIDENTIAL INFORMATION]** will compare favorably with any Lifeline plans from which Leap Lifeline customers may have to transition. We do not find the additional conditions requested by Public Knowledge and Mr. Jones to be necessary in order to remedy transaction-specific harms.⁵⁴⁸

F. Feature Phone Trade-In Program, iPhone SIM Card Replacement Program, and Device Trade-In Credits Program

172. *Record.* Mr. Jones asks that AT&T be required to replace customer devices at its expense, including devices that are only used on occasion, for as long as the device is functioning.⁵⁴⁹

173. AT&T has committed to implement a trade-in program that allows eligible customers to

⁵⁴³ See AT&T March 11, 2014 *Ex Parte* at 1.

⁵⁴⁴ See Mar. 6, 2014 AT&T Fifth Supplemental Response at 4.

⁵⁴⁵ See March 12, 2014 AT&T Clyburn *Ex Parte* at 1.

⁵⁴⁶ See Mar. 6, 2014 AT&T Fifth Supplemental Response at 4.

⁵⁴⁷ See Mar. 6, 2014 AT&T Fifth Supplemental Response at 5.

⁵⁴⁸ As described above, see ¶ 115, *supra*, AT&T has indicated that it will maintain Cricket's ETC designations for some period of time and will continue to fulfill its Lifeline ETC obligations and comply with relevant requirements. We conclude that it serves the public interest for Leap/Cricket to continue to operate as a Lifeline only ETC following consummation of the proposed transfer of control. We emphasize that nothing in this *Memorandum Opinion and Order* should be construed as authorizing Leap to relinquish its ETC designation. To relinquish Leap's (including Cricket's) ETC designation, Leap (which will become a subsidiary of AT&T after consummation of the proposed transaction) must comply separately with any state or federal relinquishment rules and requirements. Until both Leap and AT&T comply with the federal and state relinquishment rules and requirements, Leap's obligation to provide discounted services to its Lifeline customers will remain unaffected.

⁵⁴⁹ See Jones Comments at 2.

trade in their Leap prepaid feature phone for a Cricket prepaid feature phone without charge, subject to certain conditions. AT&T will advise Leap CDMA customers of this trade-in program and its terms when it becomes available.⁵⁵⁰

174. AT&T also has made the following commitment regarding Leap customers who own iPhone models 4s, 5, 5c, and 5s. Specifically, AT&T will establish a process by which Leap customers with legacy Leap iPhone models 4s, 5, 5c, and 5s can visit a New Cricket store and receive a replacement SIM card that will allow the customer to migrate to AT&T's network without having to replace his or her device.⁵⁵¹

175. AT&T also has committed to provide customers with Leap smartphones that are not compatible with the AT&T network significant credits to be used for the purchase of a new Cricket smartphone, subject to certain conditions. AT&T will advise Leap CDMA customers of this trade-in credit program and its terms when it becomes available.⁵⁵²

176. AT&T has clarified its device trade-in credit program commitment by stating that any customer who receives a device trade-in credit pursuant to that program will be able to acquire a low-cost smartphone with that credit at no or minimal additional cost to the customer.⁵⁵³ For example, AT&T

⁵⁵⁰ See Mar. 6, 2014 AT&T Fifth Supplemental Response at 6-7. Specifically, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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⁵⁵¹ See Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 13-193 (filed Mar. 12, 2014) (“AT&T March 12, 2014 *Ex Parte*”).

⁵⁵² See Mar. 6, 2014 AT&T Fifth Supplemental Response at 5-6. Specifically, **[BEGIN HIGHLY CONFIDENTIAL INFORMATION]**

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⁵⁵³ See March 12, 2014 AT&T Clyburn *Ex Parte* at 2.

represents that its Aio Wireless subsidiary currently offers smartphones at price levels less than \$50 and additional smartphones at price levels less than \$100.⁵⁵⁴ Consequently, AT&T anticipates that the device credits to which AT&T has committed to provide to qualifying Leap smartphone customers will permit those customers to acquire a New Cricket smartphone with no or minimal out-of-pocket expense.⁵⁵⁵

177. *Discussion.* We find that these commitments will ensure that Leap customers have future access to wireless service and will facilitate the migration of Leap's customers to the AT&T network. Those public interest benefits are responsive to our concerns regarding the competitive impact of the transaction on consumers and AT&T's efforts to migrate Leap's customers to the AT&T network. In particular, we believe the feature phone trade-in program, iPhone SIM card replacement program, and device credits will help ensure that Leap customers, including Lifeline customers who purchased phones, will have competitive wireless service options available once AT&T discontinues Leap's CDMA service.

G. Roaming Commitments

178. *Record.* We have concluded that questions remain whether AT&T will continue to honor roaming agreements of providers with Leap during its network transition while providers are making alternative roaming arrangements.⁵⁵⁶ Commenters request certain conditions relating to roaming during the transition. NTCH requests that AT&T maintain Leap's CDMA network for a reasonable period of time, and honor all existing roaming contracts on that network.⁵⁵⁷ CCA requests that the Commission require AT&T to "honor existing Leap roaming agreements for the full term of the agreement or four years from the date of this Transaction's closing (whichever is longer) . . ."⁵⁵⁸ CCA also maintains that AT&T should be restricted from cancelling any roaming contracts.⁵⁵⁹ Flat Wireless requests unspecified protections for Leap's current roaming partners, to reduce the impact of this transaction on competition in the nationwide CDMA roaming market.⁵⁶⁰

179. AT&T has committed to honor the rates, terms and conditions of the CDMA roaming agreements that AT&T is assuming from Leap, and to offer CDMA voice and data roaming consistent with applicable Commission roaming rules for so long as AT&T operates Leap's CDMA network.⁵⁶¹ Nothing in this commitment will require AT&T to modify the rates, terms and conditions of any CDMA roaming agreement it assumes from Leap.⁵⁶²

180. *Discussion.* We impose the commitment made by AT&T to honor existing CDMA voice and data roaming services over Leap's network, so long as that network continues to operate. The Commission has recognized that the continued ability of wireless customers to roam is an important concern when wireless service providers intend to transition network technology as a result of a proposed

⁵⁵⁴ See March 12, 2014 AT&T Clyburn *Ex Parte* at 2.

⁵⁵⁵ See March 12, 2014 AT&T Clyburn *Ex Parte* at 2.

⁵⁵⁶ See ¶ 108 *supra*.

⁵⁵⁷ See NTCH Petition to Deny or Condition at 1, 3-4.

⁵⁵⁸ See CCA Reply at 11. See also CCA Petition to Condition at 3, 7, 16-17; CCA Jan. 3, 2014 *Ex Parte* at 1, 6; CCA Feb 6, 2014 *Ex Parte* at 3.

⁵⁵⁹ See CCA Petition to Condition at 17.

⁵⁶⁰ See Jan. 6, 2014 Flat Wireless *Ex Parte* at 3-4.

⁵⁶¹ See AT&T Commitment Letter, Attachment A at 3.

⁵⁶² See AT&T Commitment Letter, Attachment A at 3.

transaction.⁵⁶³ AT&T's commitment is responsive to our concern about the ability of wireless providers to roam on Leap's CDMA network while that network continues to operate. As a result of this commitment, wireless service providers will retain the ability for their customers to roam pursuant to the Commission's roaming rules on the existing Leap CDMA network. These same providers will have additional time subsequent to the closing of the proposed transaction to take the necessary steps to obtain alternative CDMA roaming arrangements in the current Leap service areas, if that is what they choose to do. We find that AT&T's voluntary commitment to honor existing roaming agreements is in the public interest.

181. Nothing in this commitment will be construed as limiting the rights of any carrier to pursue roaming arrangements pursuant to Commission rules and the remedies they afford. We find that this commitment is sufficient to provide continuity of CDMA roaming services in the markets subject to this transaction. We do not find the specific facts of the situation warrant a condition imposing an obligation on AT&T to enter into a roaming agreement with other carriers that replicates the same rates, terms, and conditions as in the AT&T/Leap breakup roaming agreement, or any existing Leap roaming agreement.

182. Further, we decline to adopt the roaming condition that AT&T be required to maintain the CDMA network for a certain number of years post-transaction in order to support new roaming contracts. It has not been shown why the duty of carriers to provide automatic roaming would not be adequately addressed by the data roaming rule adopted by the Commission in 2011. In addition, there are other CDMA roaming partners throughout Leap's footprint.

H. Flat Wireless Commitments

183. We noted above that there appears to be at least a potential for AT&T to have the ability to influence Flat's affairs.⁵⁶⁴ AT&T states that Cricket has negotiated a definitive agreement to sell its interests in Flat and is prepared to move forward with the sale, but that Cricket and Flat currently are in arbitration and the arbitrator has stayed the disposition of Cricket's interests in Flat pending resolution of the arbitration.⁵⁶⁵ Leap now anticipates that Cricket will consummate the sale of its interests in Flat in April 2014.⁵⁶⁶

184. With regard to Flat Wireless, AT&T commits as follows: In the event that Cricket Communications, Inc. still holds any interest in Flat at the consummation of the AT&T/Leap transaction, AT&T will immediately deliver written notice to Flat notifying it, its Board of Managers and its Members that, for so long as Leap, Cricket, or any of its affiliates remains a Member of Flat (hereinafter "Cricket Members"), neither AT&T nor any Cricket Member shall exercise any right that it may have under Article 6, Article 12, or Article 13 of the Amended and Restated Company Agreement of Flat Wireless, LLC or elsewhere to: (1) acquire any additional interest in Flat, by call under Section 13.07 of the Flat Wireless LLC Agreement or otherwise, except in connection with one or more transactions subject to review and approval by the Federal Communications Commission pursuant to the processes outlined in 47 C.F.R. §§ 1.948 and 63.24; (2) choose and determine a Manager of Flat or place or cause to be placed any AT&T employee, representative or agent on Flat's Board of Managers; (3) receive or review any

⁵⁶³ See *AT&T-Verizon Wireless Order*, 25 FCC Rcd at 8746-88748 ¶¶ 95-101. See also *AT&T-ATN Order*, 28 FCC Rcd at 13704 ¶ 59-60.

⁵⁶⁴ See ¶ 129 *supra*. As discussed above, on March 3, 2014, AT&T has waived the condition requiring the disposition of all Flat interests prior to the consummation of the AT&T/Leap transaction. See ¶ 10 *supra*.

⁵⁶⁵ See Mar. 6, 2014 AT&T Fifth Supplemental Response at 2.

⁵⁶⁶ See Mar. 6, 2014 AT&T Fifth Supplemental Response at 2.

confidential and or competitively sensitive information pertaining to Flat; provided however, that AT&T shall be entitled to receive such information as is necessary for accounting and tax purposes and for Cricket to sell its interest in Flat, including a statement of its allocated share of income, gains, losses, deductions, and credits for each taxable year, on the condition that such information is used solely for those purposes.⁵⁶⁷ Finally, to the extent that the AT&T/Leap transaction is consummated prior to Cricket's sale of its interest in Flat, AT&T commits to use reasonable best efforts to cause Cricket to sell its interest in Flat as soon as practicable thereafter.⁵⁶⁸

185. We conclude that AT&T's commitments address our concerns that its ownership interest in Flat will give it the ability to influence Flat's affairs or to reduce Flat's incentive to act as a competitor to AT&T. Accordingly, we need not give further consideration to the interests of Flat Wireless in reviewing the transaction.

I. Progress Reports

186. For two years following the date of merger close, AT&T will file with the Commission a quarterly detailed report on the status of the implementation of these commitments and the migration of Leap's customers.⁵⁶⁹ If the network deployment commitments are not met within the two year reporting period, this reporting requirement will be extended with respect to those deployment commitments until such time as both deployment commitments are fully met or waived by the FCC.⁵⁷⁰ Each such report will be due 30 days following the end of the calendar quarter covered by the report, and the first such report will cover the period from the merger closing thru the end of the first full quarter thereafter.⁵⁷¹

187. We will condition consent to the proposed transaction on AT&T complying with this quarterly reporting obligation. AT&T's submission of these reports will allow Commission staff to monitor the progress of AT&T's efforts.

VIII. BALANCING THE PUBLIC INTEREST BENEFITS AND THE HARMS

188. In sum, we find that the transaction as proposed has the potential to cause some competitive and other public interest harms in several local markets, as well as to value-conscious consumers generally. Moreover, although we find some potential public interest benefits likely to arise from the transaction in terms of spectral efficiency, these potential benefits by themselves are insufficient to outweigh the potential harms.

189. However, we find that considering AT&T's various commitments, involving spectrum divestitures, the offering of certain rate plans, LTE network deployment, roaming, and device trade-in and trade-in credits for certain groups of current Leap customers, all of which we impose as conditions to our approval, in conjunction with the public interest benefits we find will likely arise from the transaction, there is sufficient evidence on this record for us to conclude that Applicants have met their burden of demonstrating that the likely public interest benefits outweigh the likely public interest harms, such that we are able to approve the proposed transaction.

IX. ORDERING CLAUSES

190. ACCORDINGLY, having reviewed the Applications and the record in these matters, IT

⁵⁶⁷ See Mar. 6, 2014 AT&T Fifth Supplemental Response at 2-3.

⁵⁶⁸ See Mar. 6, 2014 AT&T Fifth Supplemental Response at 3.

⁵⁶⁹ See AT&T Commitment Letter, Attachment A at 4.

⁵⁷⁰ See AT&T Commitment Letter, Attachment A at 4.

⁵⁷¹ See AT&T Commitment Letter, Attachment A at 4.

IS ORDERED that, pursuant to sections 4(i) and (j), 214, 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 303(r), 309, 310(d), the applications for transfer of control of Cricket License Company, LLC, Leap Wireless International, Inc., and STX Wireless License, LLC to AT&T, Inc. and the application to assign Lower 700 MHz Band A Block license WQJQ707 from Cricket License Company, LLC to Leap Licenseco Inc. are GRANTED to the extent specified in this Memorandum Opinion and Order and subject to the conditions specified herein.

191. IT IS FURTHER ORDERED that the above grant shall include authority for the transfer or assignment of any applications regarding the Leap assets that are pending at the time of consummation as well as any licenses or authorizations that may have inadvertently been omitted from the application forms filed by the Applicants.

192. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 309, 310(d), the Petitions to Deny filed by Broadvox-CLEC, LLC; David K. Smith; The Greenlining Institute; NTCH, Inc.; Public Knowledge, Consumer Action, and the Writers Guild of America, West; and Youghioghny Communications, LLC are DENIED for the reasons stated herein.

193. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 303(r), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 303(r), 309, and 310(d), the request for conditions in the Petitions or Comments filed by the Broadvox-CLEC, LLC; Competitive Carriers Association; David K. Smith; The Greenlining Institute; Infrastructure Networks, Inc.; NTCH, Inc.; Public Knowledge, Consumer Action, and the Writers Guild of America, West; The Rural Wireless Association, Inc.; and Youghioghny Communications, LLC are DENIED for the reasons stated herein.

194. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of release of this Memorandum Opinion and Order.

195. This action is taken under delegated authority pursuant to sections 0.51, 0.131, 0.261, and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.51, 0.131, 0.261, and 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger C. Sherman
Acting Chief
Wireless Telecommunications Bureau

Mindel De La Torre
Chief
International Bureau

APPENDIX A

List of Applications

Applications for consent to the transfer of control of AWS-1, PCS, and Common Carrier Fixed Point to Point licenses:

<u>File No.</u>	<u>Licensee/Lessee</u>	<u>Transferee</u>	<u>Lead Call Sign</u>
0005860676 (Lead Application)	Cricket License Company, LLC	AT&T Inc.	KNLF367
0005860985	STX Wireless License, LLC	AT&T Inc.	KNLF914
0005861153	Cricket License Company, LLC	AT&T Inc.	WQDS850

Application for consent to assignment of a 700 MHz A Block license:

<u>File No.</u>	<u>Assignor</u>	<u>Assignee</u>	<u>Call Sign</u>
0005879272	Cricket License Company, LLC	Leap Licenseco Inc.	WQJQ707

Applications for consent to the transfer of control of international section 214 authorizations:

<u>File No.</u>	<u>Authorization Holder</u>	<u>Transferee</u>	<u>Authorization Number</u>
ITC-T/C-20130801-00207	Leap Wireless International, Inc.	AT&T Inc.	ITC-214-20011011-00527
ITC-T/C-20130801-00208	STX Wireless License, LLC	AT&T Inc.	ITC-214- 20100604-00227

APPENDIX B

List of Filings

Petitions and Comments

Broadvox-CLEC, LLC
Competitive Carriers Association
David K. Smith
The Greenlining Institute
Infrastructure Networks, Inc.
NTCH, Inc.
Public Knowledge, Consumer Action, and the Writers Guild of America, West
The Rural Wireless Association, Inc.
Youghioghenny Communications, LLC

Opposition

AT&T, Inc. and Leap Wireless International, Inc.

Replies

Broadvox-CLEC, LLC
Competitive Carriers Association
David K. Smith
Infrastructure Networks, Inc.
NTCH, Inc.
Public Knowledge, Consumer Action, and the Writers Guild of America, West
The Rural Wireless Association, Inc.
Youghioghenny Communications, LLC

APPENDIX C

Markets Identified by the Initial Screen

CMAs Identified by the HHI Screen:

Market	Market Name
CMA 8	Washington, DC-MD-VA *
CMA 10	Houston, TX*
CMA 11	St. Louis, MO-IL*
CMA 13	Pittsburgh, PA*
CMA 14	Baltimore, MD*
CMA 18	San Diego, CA*
CMA 19	Denver-Boulder, CO*
CMA 25	Buffalo, NY*
CMA 26	Phoenix, AZ*
CMA 30	Portland, OR-WA*
CMA 33	San Antonio, TX*
CMA 36	Memphis, TN-AR-MS*
CMA 37	Louisville, KY-IN*
CMA 40	Dayton, OH*
CMA 45	Oklahoma City, OK*
CMA 46	Nashville-Davidson, TN*
CMA 47	Greensboro-Winston-Salem-High Point, NC*
CMA 53	Syracuse, NY*
CMA 57	Tulsa, OK*
CMA 61	Charlotte-Gastonia, NC*
CMA 65	Omaha, NE-IA*
CMA 71	Raleigh-Durham, NC*
CMA 74	Fresno, CA*
CMA 75	Austin, TX*
CMA 77	Tucson, AZ*
CMA 81	El Paso, TX*
CMA 86	Albuquerque, NM*
CMA 88	Chattanooga, TN-GA
CMA 89	Wichita, KS*
CMA 90	Charleston-North Charleston, SC*
CMA 92	Little Rock-North Little Rock, AR*
CMA 93	Las Vegas, NV*
CMA 109	Spokane, WA

* An asterisk (*) denotes a Top 100 market (as ranked by U.S. 2010 Census data).

CMA 112	Corpus Christi, TX
CMA 116	Lexington-Fayette, KY
CMA 117	Colorado Springs, CO*
CMA 128	McAllen-Edinburg-Mission, TX*
CMA 134	Atlantic City, NJ
CMA 135	Eugene-Springfield, OR
CMA 138	Macon-Warner Robins, GA
CMA 142	Modesto, CA
CMA 145	Hamilton-Middletown, OH
CMA 148	Salem, OR
CMA 150	Visalia-Tulare-Porterville, CA
CMA 155	Savannah, GA
CMA 160	Killeen-Temple, TX
CMA 162	Brownsville-Harlingen, TX
CMA 165	Fort Smith AR-OK
CMA 170	Galveston-Texas City, TX
CMA 171	Reno, NV
CMA 180	Springfield, OH
CMA 182	Fayetteville-Springdale, AR
CMA 190	Boise City, ID
CMA 197	Lake Charles, LA
CMA 209	Clarksville-Hopkinsville, TN/KY
CMA 210	Fort Collins-Loveland, CO
CMA 216	Janesville-Beloit, WI
CMA 241	Pueblo, CO
CMA 243	Greeley, CO
CMA 273	Kankakee, IL
CMA 281	Laredo, TX
CMA 285	Las Cruces, NM
CMA 287	Bryan-College Station, TX
CMA 291	Pine Bluff, AR
CMA 300	Victoria, TX
CMA 322	Arizona 5 – Gila
CMA 327	Arkansas 4 – Clay
CMA 333	Arkansas 10 - Garland
CMA 339	California 4 - Madera
CMA 347	California 12 - Kings
CMA 432	Kansas 5 – Brown
CMA 449	Kentucky 7 - Trimble
CMA 545	Nevada 3 – Storey
CMA 592	Ohio 8 – Clinton
CMA 601	Oklahoma 6 - Seminole

CMA 606	Oregon 1 - Clatsop
CMA 620	Pennsylvania 9 - Greene
CMA 632	South Carolina 8 - Hampton
CMA 651	Tennessee 9 - Maury
CMA 666	Texas 15 – Concho
CMA 667	Texas 16 - Burleson
CMA 669	Texas 18 - Edwards
CMA 670	Texas 19 - Atascosa
CMA 671	Texas 20 – Wilson

CMA's Identified by the Spectrum Screen:

Market	Market Name
CMA 101	Beaumont-Port Arthur, TX
CMA 109	Spokane, WA
CMA 112	Corpus Christi, TX
CMA 128	McAllen-Edinburg-Mission, TX*
CMA 142	Modesto, CA
CMA 162	Brownsville-Harlingen, TX
CMA 170	Galveston-Texas City, TX
CMA 171	Reno, NV
CMA 197	Lake Charles, LA
CMA 281	Laredo, TX
CMA 322	Arizona 5 – Gila
CMA 338	California 3 - Alpine
CMA 339	California 4 - Madera
CMA 341	California 6 - Mono
CMA 378	Georgia 8 - Warren
CMA 388	Idaho 1 - Boundary
CMA 419	Iowa 8 – Monona
CMA 432	Kansas 5 – Brown
CMA 458	Louisiana 5 - Beauregard
CMA 468	Maryland 2 - Kent
CMA 523	Montana 1 - Lincoln
CMA 545	Nevada 3 - Storey
CMA 561	New York 3 - Chautauqua
CMA 620	Pennsylvania 9 - Greene
CMA 625	South Carolina 1 - Oconee
CMA 667	Texas 16 - Burleson
CMA 668	Texas 17 - Newton
CMA 669	Texas 18 - Edwards
CMA 670	Texas 19 - Atascosa
CMA 671	Texas 20 - Wilson

CMA 673	Utah 1 - Box Elder
CMA 675	Utah 3 – Juab
CMA 677	Utah 5 – Carbon
CMA 678	Utah 6 – Piute
CMA 691	Virginia 11 - Madison
CMA 692	Virginia 12 - Caroline
CMA 695	Washington 3 - Ferry
CMA 703	West Virginia 3 - Monongalia

CMAAs Identified by the HHI and Spectrum Screens:

Market	Market Name
CMA 109	Spokane, WA
CMA 112	Corpus Christi, TX
CMA 128	McAllen-Edinburg-Mission, TX*
CMA 142	Modesto, CA
CMA 162	Brownsville-Harlingen, TX
CMA 170	Galveston-Texas City, TX
CMA 171	Reno, NV
CMA 197	Lake Charles, LA
CMA 281	Laredo, TX
CMA 322	Arizona 5 - Gila
CMA 339	California 4 - Madera
CMA 432	Kansas 5 - Brown
CMA 545	Nevada 3 - Storey
CMA 620	Pennsylvania 9 - Greene
CMA 667	Texas 16 - Burleson
CMA 669	Texas 18 - Edwards
CMA 670	Texas 19 - Atascosa
CMA 671	Texas 20 - Wilson

APPENDIX D

Spectrum Divestitures by AT&T

Market	Market Name	Amount and Type of Spectrum
CMA 101	Beaumont-Port Arthur, TX	20 megahertz AWS-1
CMA 109	Spokane, WA	10 megahertz AWS-1
CMA 112	Corpus Christi, TX	10 megahertz AWS-1
CMA 128	McAllen-Edinburg-Mission, TX	10 megahertz AWS-1
CMA 162	Brownsville-Harlingen, TX	10 megahertz AWS-1
CMA 171	Reno, NV	10 megahertz AWS-1
CMA 197	Lake Charles, LA	20 megahertz AWS-1
CMA 281	Laredo, TX	10 megahertz AWS-1
		10 megahertz AWS-1 (Atchison, Doniphan and Leavenworth counties)
CMA 432	Kansas 5 – Brown	10 megahertz PCS (Brown and Jackson counties)
CMA 545	Nevada 3 - Storey	10 megahertz AWS-1
CMA 669	Texas 18 - Edwards	10 megahertz AWS-1
		10 megahertz AWS-1 (Aransas, Bee and Refugio counties)
CMA 671	Texas 20 – Wilson (Aransas, Bee, Refugio, Karnes and Wilson counties only)	10 megahertz PCS (Karnes and Wilson counties)